

MT LEGISLATIVE HISTORY

Chapter 574 1991

Bill H 839 S _____

Original bill & hist. ☒ C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Feb 16 ☒ C

Hearing Date(s) Mar 26 ☒ C

Feb 21 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 22 ☒ C

Apr 21 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 837

HOUSE FINAL STATUS

4/25	TRANSMITTED TO GOVERNOR		
4/30	VETOED		
	(VETO OVERRIDE POLL CONDUCTED BY THE SECRETARY OF STATE AFTER THE SESSION)		
5/31	VETO OVERRIDE MOTION FAILED	80	64
	(VETO OVERRIDE REQUIRES 2/3 VOTE OF BOTH HOUSES)		
	RESULTS OF VETO OVERRIDE POLL:		
	HOUSE: 54—YES, 41—NO, 5—NOT VOTING		
	SENATE: 26—YES, 23—NO, 1—NOT VOTING		

HB 837 INTRODUCED BY DRISCOLL

REVISE WORKERS' COMPENSATION LAW

2/14	INTRODUCED		
2/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/14	FIRST READING		
2/14	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/21	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	REVISED FISCAL NOTE REQUESTED		
2/26	REVISED FISCAL NOTE PRINTED		
2/26	2ND READING PASSED	100	0
2/26	REVISED FISCAL NOTE RECEIVED		
2/27	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/27	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/04	FIRST READING		
3/26	HEARING		
4/01	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	49	0
4/05	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	92	1
4/11	3RD READING AMENDMENTS CONCURRED	99	0
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 574		
	EFFECTIVE DATE: 7/01/91		

HB 838 INTRODUCED BY SOUTHWORTH, ET AL.

PROHIBITING THE DISPOSAL OF CERTAIN COMPONENTS OF SOLID WASTE IN LANDFILLS OR INCINERATORS

2/14	INTRODUCED		
2/14	REFERRED TO NATURAL RESOURCES		
2/14	FIRST READING		
2/14	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
2/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/26	2ND READING DO PASS AS AMENDED MOTION FAILED	46	49

HB 839 INTRODUCED BY LEE, ET AL.

PROVIDE THAT OFFENDER WHO FAILS TO COMPLETE COURT-ORDERED COUNSELING OR TREATMENT IN LIEU OF INCARCERATION MAY BE ORDERED TO SERVE ALL OR PART OF INCARCERATION TERM, EVEN IF A PERIOD OF TIME EQUAL TO OR GREATER THAN ORIGINAL TERM OF INCARCERATION HAS EXPIRED

HOUSE BILL NO. 837

INTRODUCED BY DRISCOLL

IN THE HOUSE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS.

ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

APRIL 1, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 11, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 837
2 INTRODUCED BY Amundson
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'
5 COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING
6 SECTIONS 39-71-116, 39-71-123, 39-71-414, 39-71-701,
7 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1011,
8 39-71-1013, 39-71-1025, 39-71-1032, 39-72-601, AND
9 39-72-602, MCA; REPEALING SECTIONS 39-71-1012, 39-71-1015,
10 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023,
11 39-71-1024, 39-71-1026, AND 39-71-1033, MCA; AND PROVIDING
12 AN EFFECTIVE DATE."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 39-71-116, MCA, is amended to read:

16 "39-71-116. Definitions. Unless the context otherwise
17 requires, words and phrases employed in this chapter have
18 the following meanings:

19 (1) "Administer and pay" includes all actions by the
20 state fund under the Workers' Compensation Act and the
21 Occupational Disease Act of Montana necessary to the
22 investigation, review, and settlement of claims; payment of
23 benefits; setting of reserves; furnishing of services and
24 facilities; and utilization of actuarial, audit, accounting,
25 vocational rehabilitation, and legal services.

1 (2) "Average weekly wage" means the mean weekly
2 earnings of all employees under covered employment, as
3 defined and established annually by the Montana department
4 of labor and industry. It is established at the nearest
5 whole dollar number and must be adopted by the department
6 prior to July 1 of each year.

7 (3) "Beneficiary" means:

8 (a) a surviving spouse living with or legally entitled
9 to be supported by the deceased at the time of injury;

10 (b) an unmarried child under the age of 18 years;

11 (c) an unmarried child under the age of 22 years who is
12 a full-time student in an accredited school or is enrolled
13 in an accredited apprenticeship program;

14 (d) an invalid child over the age of 18 years who is
15 dependent upon the decedent for support at the time of
16 injury;

17 (e) a parent who is dependent upon the decedent for
18 support at the time of the injury (however, such a parent is
19 a beneficiary only when no beneficiary, as defined in
20 subsections (3)(a) through (3)(d) of this section, exists);
21 and

22 (f) a brother or sister under the age of 18 years if
23 dependent upon the decedent for support at the time of the
24 injury (however, such a brother or sister is a beneficiary
25 only until the age of 18 years and only when no beneficiary,

as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other

determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in ~~the worker's job~~ pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss or both some capacity but the physical restriction impairs the worker's ability to work.

(15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
 2 worker reaches maximum healing, in which a worker ~~is unable~~
 3 ~~to return to work in the worker's job pool after exhausting~~
 4 ~~all options set forth in 39-71-1012~~ has no reasonable
 5 prospect of physically performing regular employment.
 6 Regular employment means work on a recurring basis performed
 7 for remuneration in a trade, business, profession, or other
 8 occupation in this state. Lack of immediate job openings is
 9 not a factor to be considered in determining if a worker is
 10 permanently totally disabled.

11 (16) The term "physician" includes "surgeon" and in
 12 either case means one authorized by law to practice his
 13 profession in this state.

14 (17) The "plant of the employer" includes the place of
 15 business of a third person while the employer has access to
 16 or control over such place of business for the purpose of
 17 carrying on his usual trade, business, or occupation.

18 (18) "Public corporation" means the state or any county,
 19 municipal corporation, school district, city, city under
 20 commission form of government or special charter, town, or
 21 village.

22 (19) "Reasonably safe place to work" means that the
 23 place of employment has been made as free from danger to the
 24 life or safety of the employee as the nature of the
 25 employment will reasonably permit.

1 (20) "Reasonably safe tools and appliances" are such
 2 tools and appliances as are adapted to and are reasonably
 3 safe for use for the particular purpose for which they are
 4 furnished.

5 (21) "Temporary total disability" means a condition
 6 resulting from an injury as defined in this chapter that
 7 results in total loss of wages and exists until the injured
 8 worker reaches maximum healing.

9 (22) "Year", unless otherwise specified, means calendar
 10 year."

11 **Section 2.** Section 39-71-123, MCA, is amended to read:

12 **"39-71-123. Wages defined.** (1) "Wages" means the gross
 13 remuneration paid in money, or in a substitute for money,
 14 for services rendered by an employee. Wages include but are
 15 not limited to:

16 (a) commissions, bonuses, and remuneration at the
 17 regular hourly rate for overtime work, holidays, vacations,
 18 and sickness periods;

19 (b) board, lodging, rent, or housing if it constitutes
 20 a part of the employee's remuneration and is based on its
 21 actual value; and

22 (c) payments made to an employee on any basis other
 23 than time worked, including but not limited to piecework, an
 24 incentive plan, or profit-sharing arrangement.

25 (2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in

subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) If an injured worker is engaged in self-employment subsequent to an injury, earnings from self-employment are considered wages as defined in subsection (1) for purposes of determining entitlement to temporary total disability benefits. If a self-employed worker is entitled to temporary total disability benefits and continues to receive self-employment income, temporary total disability benefits must be reduced by an amount equal to two-thirds of the self-employment income."

Section 3. Section 39-71-414, MCA, is amended to read:

"39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled

1 to subrogation for all compensation and benefits paid or to
2 be paid under the Workers' Compensation Act. The insurer's
3 right of subrogation is a first lien on the claim, judgment,
4 or recovery.

5 (2) (a) If the injured employee intends to institute
6 the third party action, he shall give the insurer reasonable
7 notice of his intention to institute the action.

8 (b) The injured employee may request that the insurer
9 pay a proportionate share of the reasonable cost of the
10 action, including attorneys' fees.

11 (c) The insurer may elect not to participate in the
12 cost of the action. If this election is made, the insurer
13 waives 50% of its subrogation rights granted by this
14 section.

15 (d) If the injured employee or the employee's personal
16 representative institutes the action, the employee is
17 entitled to at least one-third of the amount recovered by
18 judgment or settlement less a proportionate share of
19 reasonable costs, including attorneys' fees, if the amount
20 of recovery is insufficient to provide the employee with
21 that amount after payment of subrogation.

22 (3) If an injured employee refuses or fails to
23 institute the third party action within 1 year from the date
24 of injury, the insurer may institute the action in the name
25 of the employee and for the employee's benefit or that of

1 the employee's personal representative. If the insurer
2 institutes the action, it shall pay to the employee any
3 amount received by judgment or settlement which is in excess
4 of the amounts paid or to be paid under the Workers'
5 Compensation Act after the insurer's reasonable costs,
6 including attorneys' fees for prosecuting the action, have
7 been deducted from the recovery.

8 (4) An insurer may enter into compromise agreements in
9 settlement of subrogation rights.

10 (5) If the amount of compensation and other benefits
11 payable under the Workers' Compensation Act have not been
12 fully determined at the time the employee, the employee's
13 heirs or personal representatives, or the insurer have
14 settled in any manner the action as provided for in this
15 section, the department shall determine what proportion of
16 the settlement shall be allocated under subrogation. The
17 department's determination may be appealed to the workers'
18 compensation judge.

19 (6) (a) The insurer is entitled to full subrogation
20 rights under this section, even though the claimant is able
21 to demonstrate damages in excess of the workers'
22 compensation benefits and the third-party recovery combined.
23 The insurer may subrogate against the entire settlement or
24 award of a third party claim brought by the claimant or his
25 personal representative, without regard to the nature of the

1 damages.

2 (b) If no survival action exists and the parties reach
3 a settlement of a wrongful death claim without apportionment
4 of damages by a court or jury, the insurer may subrogate
5 against the entire settlement amount, without regard to the
6 parties' apportionment of the damages, unless the insurer is
7 a party to the settlement agreement.

8 (7) Regardless of whether the amount of compensation
9 and other benefits payable have been fully determined, the
10 insurer and the claimant may stipulate the proportion of the
11 third-party settlement to be allocated under subrogation.
12 Upon review and approval by the department, the agreement
13 constitutes a compromise settlement of the issue of
14 subrogation and may not be reopened by the department or by
15 any court."

16 **Section 4.** Section 39-71-701, MCA, is amended to read:

17 "39-71-701. Compensation for temporary total
18 disability. (1) Subject to the limitation in 39-71-736, a
19 worker is eligible for temporary total disability benefits
20 when the worker suffers a total loss of wages as a result of
21 an injury and until the worker reaches maximum healing.

22 (2) The determination of temporary total disability
23 must be supported by a preponderance of medical evidence.

24 (3) Weekly compensation benefits for injury producing
25 temporary total disability shall be $66 \frac{2}{3}\%$ of the wages

1 received at the time of the injury. The maximum weekly
2 compensation benefits may not exceed the state's average
3 weekly wage at the time of injury. Temporary total
4 disability benefits must be paid for the duration of the
5 worker's temporary disability. However, if a worker is
6 released by the treating physician to the same, a modified,
7 or an alternate position that is available to the worker
8 with the same employer with a wage equivalent to or higher
9 than the wage at the time of injury, the worker is no longer
10 eligible for temporary total disability benefits even though
11 the worker has not reached maximum healing. A worker is
12 again entitled to temporary total benefits if for any reason
13 the job is no longer available to the worker and he
14 continues to be temporarily totally disabled. The weekly
15 benefit amount may not be adjusted for cost of living as
16 provided in 39-71-702(5).

17 (4) In cases where it is determined that periodic
18 disability benefits granted by the Social Security Act are
19 payable because of the injury, the weekly benefits payable
20 under this section are reduced, but not below zero, by an
21 amount equal, as nearly as practical, to one-half the
22 federal periodic benefits for such week, which amount is to
23 be calculated from the date of the disability social
24 security entitlement.

25 (5) Notwithstanding subsection (3), beginning July 1,

1 1987, through June 30, 1991, weekly compensation benefits
2 for temporary total disability may not exceed the state's
3 average weekly wage of \$299 established July 1, 1986."

4 **Section 5.** Section 39-71-702, MCA, is amended to read:

5 "39-71-702. Compensation for permanent total
6 disability. (1) If a worker is no longer temporarily totally
7 disabled and is unable to return to work due to injury, the
8 worker is eligible for permanent total disability benefits.
9 ~~At--an-insurer's-request,-an-evaluation-of-all-options-under~~
10 ~~39-71-1012-must-be-made-before--permanent--total--disability~~
11 ~~status--is--determined.~~ Permanent total disability benefits
12 must be paid for the duration of the worker's permanent
13 total disability, subject to 39-71-710 and ~~39-71-1026~~.

14 (2) The determination of permanent total disability
15 must be supported by a preponderance of medical evidence.

16 (3) Weekly compensation benefits for an injury
17 resulting in permanent total disability shall be 66 2/3% of
18 the wages received at the time of the injury. The maximum
19 weekly compensation benefits shall not exceed the state's
20 average weekly wage at the time of injury.

21 (4) In cases where it is determined that periodic
22 disability benefits granted by the Social Security Act are
23 payable because of the injury, the weekly benefits payable
24 under this section are reduced, but not below zero, by an
25 amount equal, as nearly as practical, to one-half the

1 federal periodic benefits for such week, which amount is to
2 be calculated from the date of the disability social
3 security entitlement.

4 (5) A worker's benefit amount must be adjusted for a
5 cost-of-living increase on the next July 1 after 104 weeks
6 of permanent total disability benefits have been paid and on
7 each succeeding July 1. A worker may not receive more than
8 10 such adjustments. The adjustment must be the percentage
9 increase, if any, in the state's average weekly wage as
10 adopted by the department over the state's average weekly
11 wage adopted for the previous year or 3%, whichever is less.

12 (6) Notwithstanding subsection (3), beginning July 1,
13 1987, through June 30, 1991, the maximum weekly compensation
14 benefits for permanent total disability may not exceed the
15 state's average weekly wage of \$299 established July 1,
16 1986."

17 **Section 6.** Section 39-71-703, MCA, is amended to read:

18 "39-71-703. Compensation for permanent partial
19 disability ~~----impairment--awards-and-wage-supplements. {1}~~
20 ~~The-benefits-available-for-permanent-partial-disability--are~~
21 ~~impairment--awards--and--wage--supplements.~~ A worker who has
22 reached maximum healing and is not ~~eligible--for--permanent~~
23 ~~total-disability-benefits-but-who-has-a-medically-determined~~
24 ~~physical--restriction--as--a-result-of-a-work-related-injury~~
25 may be eligible for an impairment award and wage ~~supplement~~

benefits-as-follows:

(a)--The--following--procedure--must--be--followed--for--an impairment-award:

(i)--Each--percentage--point--of--impairment--is--compensated in--an--amount--equal--to--5--weeks--times--66-2/3%--of--the--wages received--at--the--time--of--the--injury,--subject--to--a--maximum compensation--rate--of--one--half--of--the--state's--average--weekly wage--at--the--time--of--injury:

(ii)--When--a--worker--reaches--maximum--healing,--an impairment--rating--is--rendered--by--one--or--more--physicians--as provided--for--in--39-71-711,--impairment--benefits--are--payable beginning--the--date--of--maximum--healing:

(iii)--An--impairment--award--may--be--paid--biweekly--or--in--a lump-sum,--at--the--discretion--of--the--worker,--lump--sums--paid for--impairments--are--not--subject--to--the--requirements--set forth--in--39-71-741,--except--that--lump-sum--conversions--for benefits--not--accrued--may--be--reduced--to--present--value--at--the rate--set--forth--by--the--department--in--39-71-741(5):

(iv)--If--a--worker--becomes--eligible--for--permanent--total disability--benefits,--the--insurer--may--recover--any--lump-sum advance--paid--to--a--claimant--for--impairment,--as--set--forth--in 39-71-741(5).--Such--right--of--recovery--does--not--apply--to lump-sum--benefits--paid--for--the--period--prior--to--claimant's eligibility--for--permanent--total--disability--benefits:

(v)--If--a--worker--suffers--additional--injury,--an

impairment-award-payable-for-the-additional-injury--must--be reduced--by--the--amount--of--a--previous--award--paid--for impairment-to-the-same-site-on-the-body:

(b)--The--following--procedure--must--be--followed--for--a--wage supplement:

(i)--A--worker--must--be--compensated--in--weekly--benefits equal--to--66-2/3%--of--the--difference--between--the--worker's actual--wages--received--at--the--time--of--the--injury--and--the wages--the--worker--is--qualified--to--earn--in--the--worker's--job pool,--subject--to--a--maximum--compensation--rate--of--one--half--the state's--average--weekly--wage--at--the--time--of--injury:

(ii)--Eligibility--for--wage--supplement--benefits--begins--at maximum--healing--and--terminates--at--the--expiration--of--500 weeks--minus--the--number--of--weeks--for--which--a--worker's impairment--award--is--payable,--subject--to--39-71-710. A worker's--failure--to--sustain--a--wage--loss--compensable--under subsection--(i)(b)(i)--does--not--extend--the--period--of eligibility. However,--if--a--worker--becomes--eligible--for temporary--total--disability,--permanent--total--disability,--or total--rehabilitation--benefits--after--reaching--maximum healing,--the--eligibility--period--for--wage--supplement--benefits is--extended--by--any--period--for--which--a--worker--is--compensated by--those--benefits--after--reaching--maximum--healing:

(2)--The--determination--of--permanent--partial--disability must--be--supported--by--a--preponderance--of--medical--evidence:

~~{3}--Notwithstanding--subsection--(1)--beginning-July-1-
1987--through-June-30-1991--the-maximum-weekly-compensation
benefits-for-permanent-partial--disability--may--not--exceed
\$149.50--which--is-one-half-the-state's-average-weekly-wage
established-July-1-1986-~~

(1) If an injured worker suffers a permanent partial
disability and is no longer entitled to temporary total or
permanent total disability benefits, the worker is entitled
to a permanent partial disability award.

(2) The permanent partial disability award must be
arrived at by multiplying the percentage arrived at through
the calculation provided in subsection (3) by 350 weeks.

(3) An award granted an injured worker may not exceed a
permanent partial disability rating of 100%. The criteria
for the rating of disability must be calculated using the
medical impairment rating as determined by the latest
edition of the American medical association Guides to the
Evaluation of Permanent Impairment. The percentage to be
used in subsection (2) must be determined by adding the
following applicable percentages:

(a) if the claimant is 30 years of age or younger at
the time of injury, 0%; if the claimant is over 30 years of
age but under 56 years of age at the time of injury, 3%; and
if the claimant is 56 years of age or older at the time of
injury, 5%;

(b) for a worker who has completed less than 9 years of
education, 5%; for a worker who has completed 9 through 12
years of education or who has received a graduate
equivalency diploma, 3%; for a worker who has completed more
than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the
industrial injury, 0%; if a worker has an actual wage loss
of \$2 or less an hour as a result of the industrial injury,
10%; if a worker has an actual wage loss of more than \$2 an
hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was
performing heavy labor activity and after the injury the
worker can perform only light or sedentary labor activity,
20%; if a worker, at the time of injury, was performing
heavy labor activity and after the injury the worker can
perform only medium labor activity, 15%; if a worker was
performing medium labor activity at the time of the injury
and after the injury the worker can perform only light or
sedentary labor activity, 10%.

(4) The weekly benefit rate for permanent partial
disability is 66 2/3% of the wages received at the time of
injury, but the rate may not exceed one-half the state's
average weekly wage. The weekly benefit amount established
for an injured worker may not be changed by a subsequent
adjustment in the state's average weekly wage for future

1 fiscal years.

2 (5) If a worker suffers a subsequent compensable injury
3 to the same part of the body, the award payable for the
4 subsequent injury must be reduced by the amount paid for the
5 previous injury.

6 (6) As used in the section:

7 (a) "Heavy labor activity" means the ability to lift
8 over 50 pounds occasionally or up to 50 pounds frequently;

9 (b) "Medium labor activity" means the ability to lift
10 up to 50 pounds occasionally or up to 25 pounds frequently;

11 (c) "Light labor activity" means the ability to lift up
12 to 25 pounds occasionally or up to 10 pounds frequently; and

13 (d) "Sedentary labor activity" means the ability to
14 lift up to 10 pounds occasionally or up to 5 pounds
15 frequently."

16 **Section 7.** Section 39-71-704, MCA, is amended to read:

17 **"39-71-704. Payment of medical, hospital, and related**
18 **services -- fee schedules and hospital rates. (1) In**
19 **addition to the compensation provided by this chapter and as**
20 **an additional benefit separate and apart from compensation,**
21 **the following must be furnished:**

22 (a) After the happening of the injury and subject to
23 the provisions of subsection (1)(d), the insurer shall
24 furnish, without limitation as to length of time or dollar
25 amount, reasonable services by a physician or surgeon,

1 reasonable hospital services and medicines when needed, and
2 such other treatment as may be approved by the department
3 for the injuries sustained.

4 (b) The insurer shall replace or repair prescription
5 eyeglasses, prescription contact lenses, prescription
6 hearing aids, and dentures that are damaged or lost as a
7 result of an injury, as defined in 39-71-119, arising out of
8 and in the course of employment.

9 (c) The insurer shall reimburse a worker for reasonable
10 travel expenses incurred in travel to a medical provider for
11 treatment of an injury pursuant to rules adopted by the
12 department. Reimbursement must be at the rates allowed for
13 reimbursement of travel by state employees.

14 (d) Except for the repair or replacement of a
15 prosthesis furnished as a result of an industrial injury,
16 the benefits provided for in this section terminate when
17 they are not used for a period of 60 consecutive months.

18 (2) A relative value fee schedule for medical,
19 chiropractic, and paramedical services provided for in this
20 chapter, excluding hospital services, must be established
21 annually by the department and become effective in January
22 of each year. The maximum fee schedule must be adopted as a
23 relative value fee schedule of medical, chiropractic, and
24 paramedical services, with unit values to indicate the
25 relative relationship within each grouping of specialties.

Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988. After December 31, 1991, the percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase

in the state's average weekly wage as defined in 39-71-116."

Section 8. Section 39-71-741, MCA, is amended to read:

"39-71-741. ~~Compromise settlements, and lump-sum payments,--and--lump-sum--advance-payments.~~ (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department ~~or-by-any-court.~~

~~(d)--The-parties'-failure-to-reach-an-agreement-is-not-a dispute-over-which-a-mediator-or-the-workers'-compensation court-has-jurisdiction-~~

(2) (a) If an insurer has accepted initial liability for an injury, ~~permanent-total-and~~ permanent partial wage supplement disability benefits may be converted in whole or in part to a lump-sum payment.

~~(b)--The-conversion-may-be-made-only-upon-agreement between-a-claimant-and-an-insurer-~~

~~(c)~~(b) The An agreement is subject to department

approval. The department may approve an agreement if:

(i) there is a reasonable dispute concerning the amount of the insurer's future liability or benefits; or

(ii) the amount of the insurer's projected liability is reasonably certain and the settlement amount is not substantially less than the present value of the insurer's liability disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) The parties' failure to reach agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(e)(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department or by any court.

(3)(a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.

(b) The conversion may be made only upon agreement between a claimant and an insurer.

(c) The agreement is subject to department approval. The department may approve an agreement if the parties demonstrate that the claimant has financial need that:

(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(d) A lump-sum payment of permanent partial disability benefits approved by the department or granted by the court must be paid.

(4)(3) Permanent total disability benefits may be converted in whole or in part to a lump-sum advance lump sum. The total of all lump-sum advance payments to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum advance payment rests in the discretion of the department. The approval or award of a lump-sum advance payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture as set forth in 39-71-1026, and that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum advance payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) The Subject to the other provisions of this section, the department has full power, authority, and jurisdiction under subsection (1) to allow, approve, or condition compromise settlements for any type of benefits provided for under this chapter or lump-sum advances payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void

without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) ~~Subject--to--39-71-2401,--a~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a ~~lump-sum-advance-under-subsection-(4)~~ lump sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum advance payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 9. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the

worker held at the time of the injury.

{3}--"I.W.R.P."---means---an---individualized,---written
rehabilitation-program-prepared-by-the-department-of--social
and-rehabilitation-services.

{4}{3} "Rehabilitation benefits" means benefits
provided in 39-71-1003, [section 11], and 39-71-1023 through
39-71-1025.

{4} "Rehabilitation plan" means an individualized plan
of education, training, or specialized job modification
designed to assist a disabled worker in acquiring skills or
aptitudes to return to work.

{5} "Rehabilitation provider" means a rehabilitation
counselor,--other--than--the--department---of---social---and
rehabilitation---services, certified by the board for
rehabilitation certification and designated by the insurer
to the department.

{6} "Rehabilitation services" consists of a program of
evaluation, planning, and delivery of goods and services to
assist a disabled worker to return to work.

{7}{a}--"Worker's--job-pool"--means-those-jobs-typically
available-for-which-a-worker-is-qualified,--consistent--with
the--worker's--age,--education,--vocational--experience--and
aptitude---and---compatible---with---the--worker's--physical
capacities-and-limitations-as-the--result--of--the--worker's
injury--back-of-immediate-job-openings-is-not-a-factor-to-be

considered.

{b}--A--worker's--job--pool--may--be--either--local--or
statewide,--as--follows:

{i}--a-local-job-pool-is-the--job--service--office--area
that--includes-the-worker's-residence,--and

{ii}--the-statewide-job-pool-is-the-state-of-Montana."

Section 10. Section 39-71-1013, MCA, is amended to
read:

"39-71-1013. Agreement between worker and insurer
regarding option. A worker and an insurer may agree that--an
option--in--39-71-1012--is-appropriate-without-following-the
procedures-provided-in-this-part--Failure-to-reach-agreement
is-not-a-dispute-under-39-71-2401 to a rehabilitation plan
and file the agreement with the department."

NEW SECTION. **Section 11.** Rehabilitation benefits. (1)
If, as a result of an injury, an injured worker cannot
return to the job the worker held at the time of injury, the
worker is entitled to rehabilitation benefits and services
as provided in subsections (2) through (5). If there is a
dispute as to whether an injured worker can return to the
job the worker held at the time of injury, the insurer shall
designate a rehabilitation provider to evaluate and
determine whether the worker can return to the job held at
the time of injury, and if it is determined that he cannot,
the worker is entitled to rehabilitation benefits and

services as provided for in subsections (2) through (5).

(2) If it is determined that the worker cannot return to the job held at the time of injury, a vocational assessment must be completed by a rehabilitation provider designated by the insurer. The assessment must identify potential vocational goals, vocational rehabilitation training, and reemployment and wage potential and take into consideration the worker's age, education, training, work history, and residual physical capacities.

(3) If it is determined that a worker cannot return to the job the worker held at the time of injury, the rehabilitation provider shall assist the worker in obtaining new employment and the worker must be given up to 8 weeks of weekly benefits at the worker's temporary total disability rate while attempting to obtain new employment. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection must be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) Up to 104 weeks of weekly rehabilitation benefits must be provided at the temporary total disability rate established for the worker. The number of weeks of benefits provided must be stated in a rehabilitation plan filed with the department. The benefits must be paid only while the

worker is engaged in an approved rehabilitation or apprenticeship program or during a reasonable period of time while the worker is waiting to begin an approved rehabilitation or apprenticeship program. The benefits begin when the rehabilitation provider files the plan with the department. A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time. The insurer may agree to extend rehabilitation benefits beyond the 104-week period.

(5) The rehabilitation provider shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

Section 12. Section 39-71-1025, MCA, is amended to read:

"39-71-1025. Auxiliary rehabilitation benefits. In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000 may be paid by the insurer for-

(1) reasonable travel and relocation expenses used to:
 (a) search for new employment;
 (b) return to work but in a new location; and
 (c) implement a rehabilitation program-pursuant-to-a final-order-of-determination-by plan that has been filed with the department; and

1 ~~(4) attend an on-the-job training program.~~
 2 ~~(2)--reasonable--participation--with--an--employer--in--an~~
 3 ~~on-the-job-training-program--"~~

4 **Section 13.** Section 39-71-1032, MCA, is amended to
 5 read:

6 "39-71-1032. Termination of benefits for noncooperation
 7 with rehabilitation provider or the department of social and
 8 rehabilitation services -- department hearing and appeal.
 9 (1) If an insurer believes a worker is refusing unreasonably
 10 to cooperate with the rehabilitation provider or the
 11 department of social and rehabilitation services, the
 12 insurer, with 14 days' notice to the worker and department
 13 on a form approved by the department, may terminate any
 14 rehabilitation benefits the worker is receiving under this
 15 part until the worker cooperates. If the worker is receiving
 16 wage-supplement rehabilitation benefits, those benefits must
 17 continue until the department's determination under
 18 subsection (3) is made.

19 (2) The worker may contest the insurer's termination of
 20 benefits by filing a written exception to the department
 21 within ~~10~~ 20 working days after the date of the 14-day
 22 notice. The worker or insurer may request a hearing or the
 23 before the department may hold a hearing on its own motion.
 24 The department shall hold a hearing within 30 days of
 25 receipt of the request. The department shall issue an order

1 within ~~30~~ 15 days of the hearing.

2 (3) If no exceptions are timely filed or the department
 3 determines the worker unreasonably refused to cooperate, the
 4 insurer may terminate wage-loss-supplement rehabilitation
 5 benefits the worker is receiving until the worker cooperates
 6 with the rehabilitation provider. If the worker prevails at
 7 a hearing before the department, it may award attorney fees
 8 and costs to the worker under 39-71-612.

9 (4) Within ~~10-working~~ 30 days after the department
 10 mails its order to the party's last-known address, a party
 11 may appeal to the workers' compensation court."

12 **Section 14.** Section 39-72-601, MCA, is amended to read:

13 "39-72-601. Medical panel. (1) The department shall
 14 develop a list of physicians to serve on the occupational
 15 disease medical panel. The list may include physicians
 16 nominated by the board of medical examiners. A physician on
 17 the panel must be certified by his specialty board or be
 18 eligible for certification in the specialty area appropriate
 19 to the claimant's condition in relation to this chapter.

20 (2) The department or an insurer shall select a panel
 21 physician to examine a claimant, as required. The department
 22 shall appoint, as required, one member of the panel to be
 23 the chairman."

24 **Section 15.** Section 39-72-602, MCA, is amended to read:

25 "39-72-602. Insurer may accept liability -- procedure

1 for medical examination when insurer has not accepted
2 liability. (1) An insurer may accept liability for a claim
3 under this chapter based on information submitted to it by a
4 claimant.

5 (2) In order to determine the compensability of claims
6 under this chapter when an insurer ~~has--not---accepted~~
7 ~~liability~~ questions liability and to determine whether the
8 claimant is totally disabled and the extent, if any, of
9 reduction of benefits pursuant to 39-72-706, the following
10 procedure must be followed:

11 (a) The department or an insurer with notice to the
12 department shall direct the claimant to a member of the
13 medical panel for an examination. The panel member shall
14 conduct an examination to determine whether the claimant is
15 totally disabled and is suffering from an occupational
16 disease. The panel member shall submit a report of his
17 findings to the department.

18 (b) Either the claimant or the insurer may, within 20
19 days after the receipt of the report by the first panel
20 member, request that the claimant be examined by a second
21 panel member. If a second examination is requested, the
22 department or an insurer with notice to the department shall
23 direct the claimant to a second panel member who shall
24 conduct an examination to determine whether he believes the
25 claimant is totally disabled and is suffering from an

1 occupational disease and the extent, if any, of reduction of
2 benefits pursuant to 39-72-706. The panel member shall
3 submit a report of his findings to the department. When a
4 second examination has been requested, the reports of the
5 examinations shall be submitted to three members of the
6 medical panel for review. A medical panel member or the
7 panel may, in order to assist the panel member or the panel
8 in reaching a conclusion, consult with the claimant's
9 attending physician. The three panel members shall issue a
10 report concerning the claimant's physical condition and
11 whether the claimant is suffering from an occupational
12 disease.

13 (c) If a second examination is not requested, the
14 department shall issue its order determining whether the
15 claimant is entitled to occupational disease benefits based
16 on the report of the first examining physician. If a second
17 examination is requested, the department shall issue its
18 order based on the report of the three members of the
19 medical panel.

20 (d) For the purpose of reviewing the reports of the
21 examinations and issuing the report under subsection (2)(b),
22 the three members of the medical panel shall be the two
23 members of the panel who examined the claimant and the panel
24 chairman. If the panel chairman has examined the claimant,
25 the panel chairman shall appoint another member of the

1 medical panel to be the third member."

2 NEW SECTION. **Section 16.** Codification instruction.
3 [Section 11] is intended to be codified as an integral part
4 of Title 39, chapter 71, part 20, and the provisions of
5 Title 39, chapter 71, apply to [section 11].

6 NEW SECTION. **Section 17.** Repealer. Sections
7 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
8 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, and
9 39-71-1033, MCA, are repealed.

10 NEW SECTION. **Section 18.** Effective date. [This act] is
11 effective July 1, 1991.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0837, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the workers' compensation and occupational disease act.

ASSUMPTIONS:

Department of Labor and Industry (DLI):

1. Cases and claims established prior to the effective date of the proposed legislation must be treated in accordance with the laws in effect at the time the claim is filed; consequently, prior law cases will continue to require administrative and other management services.
2. Funding for the additional services created by the proposed legislation is derived from assessment fees levied on workers' compensation insurers and deposited in the industrial accident rehabilitation account established by 39-71-1004, MCA.
3. The proposed legislation repeals 39-71-1019, MCA, pertaining to the appeal process. DLI will become responsible for appeals. The additional responsibility will require a 1.00 FTE hearings officer at grade 16/step 2.
4. The proposed legislation repeals the statutes which gives the Department of Social and Rehabilitation Services (SRS) jurisdiction over retraining, rehabilitation benefits, and the management of the industrial accident rehabilitation account. DLI will implement and manage the provisions of the proposed legislation. The additional duties and responsibilities will require a 0.50 FTE program manager at grade 14/step 2.

Department of Social and Rehabilitation Services (SRS):

5. Under current law, SRS spends approximately \$640,000 per year from the industrial accident rehabilitation (IAR) account to rehabilitate injured workers. The funds are used to match federal funds for vocational rehabilitation.
6. Under the proposed legislation, SRS will no longer have priority to use the IAR account. All rehabilitation providers will have access to the IAR account. SRS will no longer be able to use IAR funds as a guarantee to the state match to federal vocational rehabilitation funds.
7. The proposed legislation amends 39-71-1011(5) to require rehabilitation providers be certified by a board of rehabilitation certification. Not all SRS vocational rehabilitation counselors are certified. Therefore, SRS eligibility for industrial accident rehabilitation funds will be diminished.
8. Federal regulations require adequate vocational rehabilitation staff be available to implement the provisions of the Vocational Rehabilitation State Plan. Without a reliable funding source, the federal government would withdraw its funding. SRS would continue to serve industrially injured clients in the state vocational rehabilitation program by using general fund to match the federal funds necessary to continue the program.
9. Vocational rehabilitation would access about \$40,000 in FY92 because of current cases.

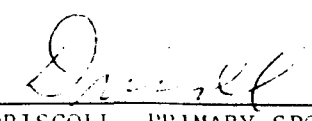
FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning


JERRY L. DRISCOLL, PRIMARY SPONSOR

DATE

Fiscal Note for HB0837, as introduced

HB 837

FISCAL IMPACT:

Dept of Labor and Industry:

	FY 92			FY 93		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	1.50	1.50	0.00	1.50	1.50
Personal Services	0	46,685	46,685	0	46,662	46,662
Operating Expenses	0	13,427	13,427	0	13,427	13,427
Total	171,684	60,112	60,112	0	60,089	60,089
<u>Funding:</u>						
State Special	0	60,112	60,112	0	60,089	60,089

Social & Rehab Services:

	FY 92			FY 93		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Benefits and Claims	640,000	640,000	0	640,000	640,000	0
<u>Funding:</u>						
General Fund	0	600,000	600,000	0	640,000	640,000
State Special	640,000	40,000	(600,000)	640,000	0	(640,000)
Total	640,000	640,000	0	640,000	640,000	0

General Fund Impact: (600,000) (640,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The fiscal impact of the proposed legislation upon the State Compensation Mutual Insurance Fund cannot be estimated without an actuarial evaluation. The State Fund did not have time to perform an actuarial evaluation before the mandatory fiscal note submittal date.
2. If the workers' compensation funds were not replaced with general fund, as assumed in this fiscal note, the SRS Vocational Rehabilitation and Visual Services Programs could not exist, and \$7 million per year in federal revenue would be lost by the state.

TECHNICAL NOTES:

1. The proposed legislation repeals 39-71-1019, MCA, which designates SRS as the exclusive remedy for injured workers aggrieved in the receipt of services provided by SRS. Federal requirements state SRS must have exclusive control over grievances related to its programs. The proposed legislation may make SRS ineligible to serve any industrially injured clients with workers' compensation funding.
2. The proposed revisions to the appeal process is unclear. The proposed legislation repeals 39-71-1016, MCA, pertaining to rehabilitation panels. What happens to persons injured between 1987 and 1991?
3. The proposed legislation contains no provisions for the certification of industrially injured workers by DLI for vocational rehabilitation services. Certification by DLI is necessary before SRS can commence vocational rehabilitative services.
4. There appears to be a problem with age, education and other category formulas used in determining settlements.

HB 837

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0837, 2nd Reading Copy.DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the workers' compensation and occupational disease acts.

ASSUMPTIONS:Department of Labor and Industry (DLI):

1. Cases and claims established prior to the effective date of the proposed legislation must be treated in accordance with the laws in effect at the time the claim is filed; consequently, prior law cases will continue to require administrative and other management services.
2. The act will shift the focus of the rehabilitation program from panel analysis and recommendations for rehabilitation to dealing with disputes over panel recommendations. This will result in a reduced workload and change in the mix of services provided under the program. A reduction from 5.00 FTE to 3.00 FTE will occur with a change in the function of the remaining FTE to resolution of disputes. A corresponding reduction in operating costs will occur.

Department of Social and Rehabilitation Services (SRS):

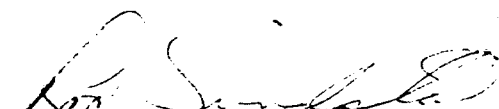
3. The act as outlined in the 2nd reading copy will have no fiscal impact on the Department of Social & Rehabilitation Services during the 1993 biennium.

FISCAL IMPACT:Dept of Labor and Industry:

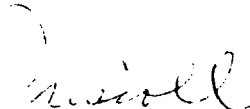
<u>Expenditures:</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	5.00	3.00	(2.00)	5.00	3.00	(2.00)
Personal Services	136,901	82,968	(53,933)	137,969	82,809	(55,160)
Operating Expenses	47,175	32,192	(14,983)	47,175	32,192	(14,983)
Total	184,076	115,160	(68,916)	185,144	115,001	(70,143)
<u>Funding:</u>						
State Special	184,076	115,160	(68,916)	185,144	115,001	(70,143)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The fiscal impact of the proposed legislation upon the State Compensation Mutual Insurance Fund cannot be estimated without an actuarial evaluation. The State Fund did not have time to perform an actuarial evaluation before the mandatory fiscal note submittal date.


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning

DATE


 JERRY L. DRISCOLL, PRIMARY SPONSOR

DATE

Fiscal Note for HB0837, 2nd Reading Copy

HB 837

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES**, on February 16, 1991,
at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)

Members Absent:

Royal Johnson (R)
Thomas Lee (R)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 465

Motion: REP. THOMAS MOVED HB 465 DO PASS.

Motion: REP. THOMAS moved to amend HB 465. EXHIBIT 1, NUMBERS 1-8 AND 10-11. He explained the amendments, including: Number 8 coordinates HB 465 with HB 837, and Number 10 causes the impairment process to go through mediation.

Vote: Motion to amend carried unanimously.

Motion: REP. THOMAS MADE A SUBSTITUTE MOTION THAT HB 465 DO PASS AS AMENDED.

said originally there were six zones. The labor and other entities expanded it to ten zones so people would not be "gouged" by the prevailing wage. Mr. Fenderson said yes. The rural counties felt higher rates of pay were being imported out of the large cities into the rural areas. A compromise was reached from negotiations between the rural counties and the Prevailing Wage Advisory Committee.

REP. HOFFMAN asked Mr. Fenderson to respond to Commissioner Micone's concern about the elimination of the Board of Personnel Appeals. Mr. Fenderson said the Board of Personnel Appeals members do not have the expertise to make judgments on Davis-Bacon questions. It was originally set up for unit determinations and unfair labor practices.

REP. JOHNSON asked Mr. Fenderson to respond to the comment about a contractor's license being suspended for five years which may put him out of business. Mr. Fenderson said there should be an extreme penalty to stop the abuse.

Closing by Sponsor:

REP. DRISCOLL said that Commissioner Micone talked about the weighted average versus the rate paid in the area. In zone 8, Billings and Colstrip, he turned 250,000 hours at \$12.60 per hour for labor. Because some other contractors had turned in only a few thousand hours, the rate had to be reduced by law. In that area, 90 percent of construction work was paid at \$12.60 per hour, but it can't be prevailed. The present enforcement of the law is paid out of other funds. A contractor has been caught four times for wage violations, and each time he did not receive a penalty but only paid what should have been paid in the first place. This is happening because only one person in the State of Montana enforces this law. Instead of being paid for out of other tax monies, it should be paid for by the violators.

HEARING ON HB 837

Presentation and Opening Statement by Sponsor:

REP. DRISCOLL, House District 93, Billings, said HB 837 changes the Workers' Compensation system. In 1987 when the unfunded liability was over \$2 million, the legislature passed the bill that inserted the wage law system. At the time there were 5,000 open cases at the Division and currently there's almost 11,000. It doesn't work. HB 837 changes the present formula to 350 weeks times the formula on Page 17 and 18. The formula is based on age, type of work, and type of work the doctor says the injured worker is able to do after the injury. Those percentages added together times 350 weeks would be what the permanent partial disability award would be. The present law, 39-71-1012, MCA, states that an injured worker can return to his previous job and employer, the previous employer could modify a position, or the injured worker could do anything else in the state of Montana --

which could be a parking lot attendant. Sometimes people get true rehabilitation, but most of the time they do not. HB 837 changes the law where the rehabilitation specialist would have eight weeks to find the injured worker a job. At the end of that time if the specialist hasn't found the worker a job, and the worker has an impairment where he can't return to his former employment or type of work, he's eligible for 104 weeks of rehabilitation benefits paid the same as the temporary total disability rate. The worker would have a choice of whether he wanted the money or true rehabilitation, and he would have more of a decision on the type of rehabilitation. If that worker didn't want to be a 7-11 clerk, he could take the 104 weeks. If the rehabilitation specialist found the worker a job paying an equivalent wage to his previous job, then the worker wouldn't need rehabilitation.

Proponents' Testimony:

Norm Grosfield, Attorney, Helena, said under the current system there is no realistic rehabilitation system. If a minimum wage position is found, the injured worker is not entitled to any rehabilitation benefits even if he was making \$15 per hour before. There should be realistic benefits. To offset the costs, permanent partial benefits would be reduced. The intent is to provide meaningful benefits to those who are truly injured and need assistance. He presented amendments. **EXHIBIT 6.** Adjustments have been made in the percentages that would be paid to injured workers for various categories under the permanent partial system. A claimant could not get in excess of \$20,000 in lump-sum advances. The insurance industry was concerned about claimants who continuously come back and get advances against their final resolution.

George Wood, Executive Secretary, Montana Self Insurers Association, stated the wage law system has not worked; it is not understandable. HB 837 simplifies the permanent partial section and lump-sum procedures. It strengthens the rehabilitation section. When the worker has permanent impairment and can't return to the same or similar job, he can make an agreement with the insurer to become eligible for up to 104 weeks while he is retrained.

Pat Sweeney, State Fund, stated support of the bill as amended. HB 837 as amended is cost neutral from a benefit standpoint.

Mike Micone, Commissioner, Department of Labor, said that HB 837 simplifies and clarifies the process.

James Tutwiler, Montana Chamber of Commerce, stated his support of the bill with amendments. HB 837 will replace wage supplements with an indemnity system which judges and laymen will be able to understand. The bill may have some savings in administrative costs for the State Fund.

Gene Phillips, Alliance of American Insurers, stated his support with the amendments.

John Whiston, Attorney, Missoula, stated he wasn't sure if he was a proponent or opponent. The amendments significantly change the bill. There is no rehabilitation available to injured Workers' Compensation claimants. According to State Fund statistics, only one third of the injured workers have returned to work at the time rehabilitation services were terminated. This needs to be changed, but whether it needs to be changed by the way of HB 837 is the question. He used the system of HB 837 on four claimants he had already settled cases for. Half of them did better under the bill and half did worse. Those claimants are not a significant sample of the thousands of claimants that go through the system, but he would like to have the opportunity to review his claimants and other attorneys who represent claimants.

Bill Crivello, Rehabilitation Association of Montana and the Montana Chapter of Rehabilitation Professionals in the private sector, said the 1987 legislation has enhanced rehabilitation for injured workers and the early return to work program for a majority of injured workers. Lack of clarity or compliance in the law has resulted in the insurers over reliance on job alternatives with little or no provision of service to the injured worker. Minimum wage jobs should not be projected without affording the injured worker real rehabilitation assistance in the form of job placement or a plan designed to get that worker back to work. Early intervention and return to work assistance proves beneficial to the injured worker. His association has not taken a formal position on this bill.

Opponents' Testimony:

Jim Smith, Montana Association for Rehabilitation and Montana Association for Rehabilitation Facilities, said the passage of HB 837 could result in the loss of \$3.5 million to Vocational Rehabilitation (Voc-Rehab) at the Social and Rehabilitation Services (SRS) and the loss of the services to thousands of Montanans with severe developmental, physical, emotional, or mental disabilities. Up until 1983 Voc-Rehab at SRS was funded with General Fund money which was used to match federal money available to the state through the Rehabilitation Act. In 1983 the General Fund money was substituted with funds from Industrial Accident Rehabilitation Account at the Workers' Compensation Division. SRS thought the money from that account was to serve all kinds of disabilities including industrial accidents. Workers' Compensation thought the funds were for the rehabilitation of industrial accidents only. About \$650,000 is available through that account. Those funds are used to match federal funds of about \$2.6 million. The referrals have diminished from 500 - 700 in 1984 down to 23 in 1989. Voc-Rehab has tried to access the industrial accident rehabilitation account at Workers' Compensation with no avail. The Workers' Compensation Division has shown no interest. If someone has been

referred by Workers' Compensation to SRS for vocational rehabilitation services, a fair hearing has to be granted and conducted by Voc-Rehab at SRS. The repeal of Sections 39-71-1019 and 39-71-1033 sends that fair hearing process back to the Workers' Compensation Division, which could jeopardize the federal funds. Page 27, Lines 5-7, Section 39-71-1003 established the industrial accident rehabilitation account. The language on page 27 would expand the industrial accident account to all rehabilitation providers and a new group of rehabilitation services. This might further restrict access to the funds and limit all funding available to Voc-Rehab. If the funds are not accessed, Voc-Rehab can't draw the federal funds. Voc-Rehab has 405 cases that have been referred by the Workers' Compensation Division. There are two solutions: 1. Set aside \$650,000 for the Voc-Rehab Division at SRS. 2. The Labor and Employment Relations Committee could report a committee bill appropriating about \$650,000 of General Fund money to SRS.

Joe Mathews, Administrator, Rehabilitative Visual Services Division, Department of Social and Rehabilitation Services, said in 1983 as mandated by Montana's legislature, SRS was given Workers' Compensation trust fund dollars with which to grab its federal match. When Voc-Rehab received the trust fund money, it was able to access those federal dollars because there was a great number of Workers' Compensation clients referred to SRS. The number of referrals has diminished, therefore, preventing access of the trust fund money. If this continues Montana will fail to meet the Federal Maintenance of Effort Level. Montana has to be able to show that it is putting up 20 percent of the money invested in the rehabilitation of all disabled persons before the Federal Government will match with its 80 percent. People need the opportunity to return to work and maximize their potential. This program is serving 8,000 Montanans with disabilities. SRS would not be opposed to replacing the trust fund money with General Fund money.

Questions From Committee Members:

REP. DRISCOLL said SRS has old cases from 3 to 5 years ago, but only 23 cases were referred in 1989. The money follows the injured worker to SRS, but they are not receiving new cases. Their money is slowly drying up. They receive money, but they can't spend it except on Workers' Compensation cases. Slowly the match for federal money for Workers' Compensation is going down. If they want to return the bill to its present form, it won't make any difference, they are going to go broke anyway. They need \$650,000. The bill says the injured worker will decide if he needs rehabilitation or not and not the experts.

REP. WHALEN asked how many injured workers have been rehabilitated into parking lot attendants since 1987. **Liz Pratt, Acting Supervisor of Rehabilitation Unit, Employment Relations Division, Department of Labor and Industry,** said that Section 39-71-1012 Subsection 2, Subsection (c) states the return to a

related occupation suited to the claimants education and marketable skills. The Rehabilitation Panel does not assume that any unskilled job is a related job. Perhaps additional rehabilitation services should be provided by the insurer. Currently, the insurer may approach the claimant with an unskilled job and settlement proposal. If claimants don't realize that the Panel does not accept unskilled jobs as being justification for a related occupation, they do not know they may be entitled to rehabilitation services. Once they receive a settlement from the insurer, they realize the unskilled job is not financially appropriate and seek rehabilitation from SRS or other sources. SRS in turn can't access the trust fund monies appropriated for Workers' Compensation claimants. SRS then has to utilize General Fund money.

CHAIR SQUIRES asked Ms. Pratt if the clients were made aware of what they are actually doing if they take a job. There is an insistence that they find some type of employment. Ms. Pratt said no; the main criteria to be met under option (c) is the positions have to be "typically available", the positions have to be medically approved, and the claimant is to have appropriate skills. Appropriate skills are not defined. If a claimant meets those criterion, he can go back to work. The lack of an immediate opening is not to be considered and job placement is not required to be provided to the claimant. Then the benefits are reduced to wage supplement.

REP. JOHNSON asked Mr. Grosfield why the Montana Association of Rehabilitation of SRS was not made a part of the committee hearing. Mr. Grosfield said the proposed bill wouldn't have an effect on the practical operations of SRS. SRS plays a small role in rehabilitation of injured workers under the 1987 law. REP. JOHNSON asked if he would object to SRS being involved if the law was changed. Mr. Grosfield said no.

CHAIR SQUIRES deferred HB 837 to a subcommittee. REP. WANZENRIED was appointed as Chairman, with REPS. DRISCOLL and THOMAS as committee members.

Closing by Sponsor:

REP. DRISCOLL said Page 27, Lines 13-14, the definition of a rehabilitation provider says, "other than the department of SRS." That is in the present law and is stricken in HB 837. SRS wants the money, which is another issue. SRS does a good job in rehabilitating people. The Division isn't sending them clients, so those clients aren't getting any services. \$650,000 is needed to match the federal money for the rehabilitation program at SRS. The law would be changed to a plan that the worker wants. If an injured worker has a disability percentage of \$30,000, it isn't anybody's business what that worker does with the money. Injured workers are treated like little kids, and they are told what they will be for the rest of their lives. The intent of the bill is to provide an injured worker the ability to go to the

rehabilitation center of their choice to get true services. The rehabilitation providers will find a job for him or retrain him. Under the system if a minimum-wage job is found for the claimant and there is a significant wage loss, the claimant may be entitled to a wage supplement of \$150 per week up to 500 weeks. Then it is negotiated how much the settlement will be. No one ever tells the injured worker to wait and get rehabilitation.

EXECUTIVE ACTION ON HB 110

Motion: REP. THOMAS MOVED HB 110 DO PASS.

Discussion:

REP. WANZENRIED stated there was some concern regarding the federal regulations governing testing. He substituted amendments for Page 1 of Exhibit 3. EXHIBIT 7

Motion: REP. WANZENRIED moved to amend HB 110.

REP. DOLEZAL asked REP. WANZENRIED if the amendments address the Code of Federal Regulations (CFR), Part 40. REP. WANZENRIED said the concern was that the reference material 49 CFR 40, requires random drug testing. It does not. Drug testing would be on a pre-employment and biennial physical basis.

REP. COCCHIARELLA asked REP. WANZENRIED to explain who the employees would be on the second amendment of line 3. REP. WANZENRIED said the bill was directed toward individuals who are employed in commercial transportation of commodities and people on an intra-state basis.

Vote: Motion to amend carried unanimously of members present.

Motion: REP. WANZENRIED MADE A SUBSTITUTE MOTION THAT HB 110 DO PASS AS AMENDED.

Discussion:

REP. DRISCOLL asked REP. THOMAS if he thought Steve Browning would try to amend this bill on the Floor. REP. THOMAS said he didn't know.

REP. DRISCOLL asked if the bill was passed, will there be an attempt to change it back so random testing would be allowed. REP. WANZENRIED said he would only support the bill as written. If there is an attempt to change the limitations on the drug testing, he will do everything he can to make sure it does not become law.

Vote: HB 110 DO PASS AS AMENDED. EXHIBIT 8. Motion carried unanimously of members present.

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/16/91

Afkr ✓
proxy ✓
✓
✓
✓
✓
✓

✓
✓
✓
✓

HB 837
(Introduced)

1. Page 11, line 14 and 15.
Following: "department"
Strike: "or by any court"
2. Page 11, line 16 through page 13, line 3.
Strike: section 4 in its entirety
Renumber: subsequent sections
3. Page 13, line 7.
Following: "is"
Strike: "unable to return to work due to injury"
Insert: "totally disabled as defined 39-71-116"
4. Page 17, line 20.
Following: "percentages"
Insert: "to the impairment rating"
5. Page 17, line 23.
Following: "injury."
Strike: "3%"
Insert: "2%"
6. Page 17, line 25.
Following: "injury."
Strike: "5%"
Insert: "3%"
7. Page 18, line 2.
Following: "education."
Strike: "5%"
Insert: "3%"
8. Page 18, line 4.
Following: "education."
Strike: "3%"
Insert: "2%"

9. Page 19, line 2.

Following: "injury"

Insert: "or injuries"

10. Page 19, line 5.

Following: "injury"

Insert: "or injuries"

11. Page 22.

Following: line 22

Insert: "(b) The total of any lump sum conversion in part, awarded a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703, or \$20,000, whichever is less."

12. Page 22, line 25.

Following: "(e)"

Strike: "(b)"

Insert: "(c)"

13. Page 24, line 6 through line 8.

Strike: line 6 through line 8 in their entirety.

14. Page 27, line 9 through line 11.

Strike: line 9 through line 11 in their entirety.

Insert: "to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on the job training, education, training or specialized job modification."

15. Page 28, line 15 through page 30, line 6.

Strike: page 28, line 15 through "department." on page 30, line 6

Insert: "(1) An injured worker is eligible for rehabilitation benefits if (a) through (d) are met:

(a) the injury results in permanent disability;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury or any job requiring similar abilities;

(c) a rehabilitation plan completed by a rehabilitation provider, designated by the insurer, certifies that the injured worker has reasonable vocational goals, a reemployment and wage potential and takes into consideration the worker's age, education, training, work history and residual physical abilities;

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department.

(2) After the filing of the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits shall be paid for the period specified in the

agreement, not to exceed 104 weeks. Rehabilitation benefits shall be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed upon rehabilitation plan. Rehabilitation benefits shall be paid while the worker is satisfactorily completing the agreed upon rehabilitation plan.

16. Page 30, line 11.

Following: "provider"

Insert: "as authorized by the insurer"

17. Page 30, line 19.

Following: "for"

Insert: " :"

18. Page 30, line 20.

Insert: "(1)"

19. Page 30, line 21.

Strike: "(1)"

Insert: "(a)"

20. Page 30, line 22.

Strike: "(2)"

Insert: "(b)"

21. Page 30, line 23.

Strike: "(3)"

Insert: "(c)"

22. Page 31, line 1.

Strike: "(4)"

Insert: "(d)"

23. Page 31, line 2.

Insert: "(2) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker shall be entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection must be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section."

24. Page 31, line 15.

Following: "cooperates."

Strike: page 31, line 15 through 18.

25. Page 32, line 2.

Following: "(3)"

Strike: page 32, line 2 through "provider." on line 6.

26. Page 35.

Following: line 11

Insert: "NEW SECTION, SECTION 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Empl Relations COMMITTEE BILL NO. 837
DATE 2/16/91 SPONSOR(S) Rep. Jerry Driscoll

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joe Mathews	ST. Dept of SRS - ^{Rehab/} Visual Services		X
Pay Williams	"		X
Jim Smick	THE MAR/MARF		X
George Weed	mt Self Insures Assoc	as amended X	
Pat Sweeney	STATE FUND	amended ✓	
GENE PHILLIPS	ALLIANCE AMER INS	AMENDED X	
DAN EDWARDS	OLBAU	X	
Ben Howard	MUNCA	amended X	
Jim Trotter	MT CHAMBER	✓	
E FENDERSON	MT ST BLS TRADES	✓	
Nike Meenan	DLE	✓	
W/ Crivello	Rehab Assoc MT	✓	
Bob Heiser	UFCW	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES on February 21, 1991, at 2:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 837

Motion: REP. DRISCOLL MOVED HB 837 DO PASS.

Motion: REP. DRISCOLL moved to amend HB 837.

Discussion:

REP. DRISCOLL presented amendments. EXHIBIT 1. Section 2 was deleted from the bill because on Page 8, Lines 13-21, the definition of self employment was stricken. On Page 11, Lines 14-15, "or by any court" was stricken because the Supreme Court can't be told what to do. On Page 17, Line 20, through Page 18, Line 4, the amendments change the percentages. The injured worker will get an impairment rating from a doctor. A percentage is figured from the wage, education, and ability to work after the injury. The percentage times the 350 weeks will determine the amount of money the injured worker will receive. The amendments on Page 19 state that if a person has a subsequent injury to the same body part, he can't collect twice on the same body part. Page 22, Line 25, limits the lump-sum conversion advance of \$20,000. In the original bill lump-sum conversions could be discounted to present value. The amendment states that permanent total lump-sums could be converted to present value, but permanent partial lump-sums cannot be discounted to present value. Presently, the injured worker receives 500 weeks and this bill limits it to 350. The injured worker shouldn't have to receive the present value on top of only receiving 350 weeks. On Page 26 a new section is inserted. If the rehabilitation services determine an injured worker can return to work without retraining, a rehabilitation specialist will have eight weeks to find the worker a job. If a job isn't found at the end of eight weeks, a rehabilitation plan must be designed if necessary. At that point the injured worker would receive up to 104 weeks of rehabilitation benefits. The bill is revenue neutral and may save money depending upon how many people use the rehabilitation benefits and how many jobs the rehabilitation services find for the workers in the eight weeks.

REP. WANZENRIED said the subcommittee met twice and other meetings were held with interested parties. The Social and Rehabilitation Services (SRS) was concerned about its access to the money currently used to leverage federal funds. He submitted a statement that the intent of the subcommittee's actions were made clear as to not affect the industrial accident account used by the SRS for vocational rehabilitation. EXHIBIT 2. He had received a letter from a rehabilitation counselor in Billings concerned about the elimination of rehabilitation panels. That is not affected in the bill. On Page 32, the medical panel is not repealed from existing law. Those sections of the bill are being removed, so there won't be changes in those sections of law.

REP. DRISCOLL asked REP. WANZENRIED if the letter was about a medical panel or a rehabilitation panel. REP. WANZENRIED said it refers to vocational rehabilitation panel. REP. DRISCOLL said that is repealed; it is no longer necessary because under the old system the rehabilitation person wrote the plan and submitted it. The panel was the only place a worker could complain to.

Under this bill, the injured worker has more of a voice in the rehabilitation plan and agrees to the plan by signing it.

Vote: HB 837 AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 837 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 807

Motion: REP. DRISCOLL MOVED HB 807 DO PASS.

Motion: REP. DRISCOLL moved to amend HB 807. EXHIBIT 3

Discussion:

REP. DRISCOLL said the occupations that were statutorily exempt from Workers' Compensation were inserted back into the bill just as they are in the present law. Those occupations that were statutorily exempt from Unemployment Insurance (UI) were inserted back into the bill. The occupations that were statutorily exempt from Workers' Compensation and fit under UI, were moved under UI. Language was added to exempt an independent contractor from Workers' Compensation and UI by one action when the Department of Labor certifies that he is an independent contractor. Some people have gotten on the Workers' Compensation exemption list and not on the UI list. The intent of this bill is to solve the problems people are having with the auditors. Cosmetologists were exempted from Workers' Compensation and not UI. Newspaper carriers were exempt from both but different ages. HB 807 has made the exemptions consistent. If the employers get an exemption, they automatically get it from both Workers' Compensation and UI, and vice versa. The fiscal note has changed, and it should be revised to reflect the changes before the bill goes to the Senate.

Ms. McClure said under the amendment on Page 12, Line 22, the cosmetologists and barbers were moved into their own little niche to be consistent with HB 342.

Vote: HB 807 AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 807 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 836

Motion: REP. DOLEZAL MOVED HB 836 DO PASS.

Motion: REP. DOLEZAL moved to amend HB 836. EXHIBIT 4

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE

2/21/91

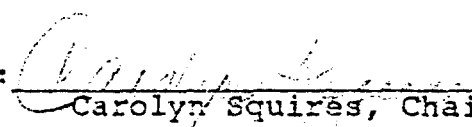
NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓ -		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 5

Mr. Speaker: We, the committee on Labor report that House Bill 837 (first reading copy -- white) do pass as amended .

Signed: 
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "39-71-116,"

Strike: "39-71-123," and "39-71-701,"

2. Title, line 7.

Following: "39-71-741,"

Insert: "39-71-1003,"

3. Title, lines 8 and 9.

Following: "39-71-1025,"

Insert: "AND"

Following: "39-71-1032,"

Strike: "39-72-601, AND 39-72-602,"

4. Title, line 10.

Following: "39-71-1018,"

Strike: "39-71-1019,"

5. Page 6, line 11 through page 8, line 21.

Strike: section 2 in its entirety

Renumber: subsequent sections

6. Page 11, lines 14 and 15.

Following: "department"

Strike: "or by any court"

7. Page 11, line 16 through page 13, line 3.

Strike: section 4 in its entirety

Renumber: subsequent sections

8. Page 13, line 7.

Following: "is"

Strike: "unable to return to work due to injury"

Insert: "permanently totally disabled, as defined in 39-71-116"

9. Page 17, line 20.

Following: "percentages"
Insert: "to the impairment rating"

10. Page 17, line 23.
Following: "injury,"
Strike: "3%"
Insert: "2%"

11. Page 17, line 25.
Following: "injury,"
Strike: "5%"
Insert: "3%"

12. Page 18, line 2.
Following: "education,"
Strike: "5%"
Insert: "3%"

13. Page 18, line 4.
Following: "diploma,"
Strike: "3%"
Insert: "2%"

14. Page 19, line 2.
Following: "injury"
Insert: "or injuries"

15. Page 19, line 4.
Strike: "must" through "amount"
Insert: "may not duplicate any amounts"

16. Page 19, line 5.
Following: "injury"
Insert: "or injuries"

17. Page 22, line 25.
Following: line 24
Insert: "(b) The total of any lump-sum conversion in part that
is awarded to a claimant prior to the claimant's final award
may not exceed the anticipated award under 39-71-703 or
\$20,000, whichever is less."
Renumber: subsequent subsections

18. Page 24, lines 6 through 8.
Strike: subsection (2)(d) in its entirety

19. Page 24, line 11.
Following: "advance"
Strike: "payments"

Insert: "conversions in part that are awarded"

20. Page 25, lines 3 and 4.

Following: "under"

Strike: "this section"

Insert: "subsection (3)"

21. Page 26, line 15.

Following: line 14

Insert: "Section 7. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for vocational rehabilitation expenses. (1) Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of social and rehabilitation services."

Renumber: subsequent sections

22. Page 27, lines 9 through 11 .

Strike: line 9 through "work" on line 11

Insert: "to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification"

23. Page 27, line 16.

Following: "department"

Insert: "or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003"

24. Page 28, line 15 through page 30, line 6.

Following: "benefits." on line 15

Strike: remainder of line 15 through "department." on page 30, line 6

Insert: "(1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and

wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests; and

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2). (5)"

Renumber: subsequent subsection

25. Page 30, lines 8 and 10.

Following: "time."

Strike: remainder of line 8 through "period." on line 10

26. Page 30, line 11.

Following: "provider"

Insert: ",as authorized by the insurer,"

27. Page 31, lines 15 through 18.

Following: "cooperates."

Strike: remainder of line 15 through "made." on line 18

28. Page 32, lines 2 through 6.

Following: "(3)"

Strike: remainder of line 2 through "provider." on line 6

29. Page 32, line 12 through page 35, line 1.

Strike: sections 14 and 15 in their entirety

Renumber: subsequent sections

30. Page 35, lines 3 and 5.

Strike: "11"

Insert: "10"

31. Page 35, line 8.

Strike: "39-71-1019,"

32. Page 35, line 10.

Following: line 9

Insert: "NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

CLERICAL

2-11-22

House Bill No. 837

Date: 2/22

Time: 4 p.m.

CAJ
(Legislative Council Staff)

☒ Labov
S / H Standing Committee

Charles Squires
(Chairman)

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

32. Insert: " . . . Section (18)¹ 15."

24. Insert: " (2) . . . the agreed-upon"¹

Amendments to House Bill No. 837
First Reading Copy

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure

1. Title, line 6.

Following: "39-71-116,"

Strike: "39-71-123," and "39-71-701,"

2. Title, line 7.

Following: "39-71-741,"

Insert: "39-71-1003,"

3. Title, lines 8 and 9.

Following: "39-71-1025,"

Insert: "AND"

Following: "39-71-1032,"

Strike: "39-72-601, AND 39-72-602,"

4. Title, line 10.

Following: "39-71-1018,"

Strike: "39-71-1019,"

5. Page 6, line 11 through page 8, line 21.

Strike: section 2 in its entirety

Renumber: subsequent sections

6. Page 11, lines 14 and 15.

Following: "department"

Strike: "or by any court"

7. Page 11, line 16 through page 13, line 3.

Strike: section 4 in its entirety

Renumber: subsequent sections

8. Page 13, line 7.

Following: "is"

Strike: "unable to return to work due to injury"

Insert: "permanently totally disabled, as defined in 39-71-116"

9. Page 17, line 20.

Following: "percentages"

Insert: "to the impairment rating"

10. Page 17, line 23.

Following: "injury,"

Strike: "3%"

Insert: "2%"

11. Page 17, line 25.

Following: "injury,"

Strike: "5%"

Insert: "3%"

12. Page 18, line 2.
Following: "education,"
Strike: "5%"
Insert: "3%"

13. Page 18, line 4.
Following: "diploma,"
Strike: "3%"
Insert: "2%"

14. Page 19, line 2.
Following: "injury"
Insert: "or injuries"

15. Page 19, line 4.
Strike: "must" through "amount"
Insert: "may not duplicate any amounts"

16. Page 19, line 5.
Following: "injury"
Insert: "or injuries"

17. Page 22, line 25.
Following: line 24
Insert: "(b) The total of any lump-sum conversion in part that
is awarded to a claimant prior to the claimant's final award
may not exceed the anticipated award under 39-71-703 or
\$20,000, whichever is less."
Renummer: subsequent subsections

18. Page 24, lines 6 through 8.
Strike: subsection (2)(d) in its entirety

19. Page 24, line 11.
Following: "advance"
Strike: "payments"
Insert: "conversions in part that are awarded"

20. Page 25, lines 3 and 4.
Following: "under"
Strike: "this section"
Insert: "subsection (3)"

21. Page 26, line 15.
Following: line 14
Insert: "**Section 7.** Section 39-71-1003, MCA, is amended to read:
"**39-71-1003. Eligibility for vocational rehabilitation
expenses.** (1) Upon certification by the department of social
and rehabilitation services, a disabled worker may be paid
vocational rehabilitation expenses from funds provided in 39-71-
1004, in addition to benefits payable under the Workers'
Compensation Act.
(2) The appeal process provided for in 53-7-106 is the

exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of social and rehabilitation services."

Renumber: subsequent sections

22. Page 27, lines 9 through 11 .

Strike: line 9 through "work" on line 11

Insert: "to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification"

23. Page 27, line 16.

Following: "department"

Insert: "or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003"

24. Page 28, line 15 through page 30, line 6.

Following: "benefits." on line 15

Strike: remainder of line 15 through "department." on page 30, line 6

Insert: "(1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designed by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests; and

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's

temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2). (5)"

Renumber: subsequent subsection

25. Page 30, lines 8 and 10.

Following: "time."

Strike: remainder of line 8 through "period." on line 10

26. Page 30, line 11.

Following: "provider"

Insert: ",as authorized by the insurer,"

27. Page 31, lines 15 through 18.

Following: "cooperates."

Strike: remainder of line 15 through "made." on line 18

28. Page 32, lines 2 through 6.

Following: "(3)"

Strike: remainder of line 2 through "provider." on line 6

29. Page 32, line 12 through page 35, line 1.

Strike: sections 14 and 15 in their entirety

Renumber: subsequent sections

30. Page 35, lines 3 and 5.

Strike: "11"

Insert: "10"

31. Page 35, line 8.

Strike: "39-71-1019,"

32. Page 35, line 10.

Following: line 9

Insert: "NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section



The Big Sky Country

EXHIBIT 2
DATE 2/21/91
HB 837

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE WANZENRIED

HOUSE DISTRICT 7

HELENA ADDRESS:

CAPITOL STATION
HELENA, MONTANA 59620
(406) 444-4800

HOME ADDRESS:

435 3RD AVE. EAST
KALISPELL, MONTANA 59901
(406) 752-2297

COMMITTEES:

LABOR & EMPLOYMENT
RELATIONS
NATURAL RESOURCES
TAXATION
FISH & GAME

February 21, 1991

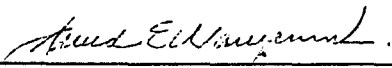
TO: HOUSE LABOR COMMITTEE

FROM: REPRESENTATIVE DAVE WANZENRIED

RE: INTENT OF SUBCOMMITTEE ACTIONS ON HB837

In its thorough review and subsequent actions on HB837 that propose to change the statutes relating to the rehabilitation of injured workers, the subcommittee does not intend to affect the monies in the industrial accident account used by the Department of Social and Rehabilitation Services for the vocational rehabilitation of injured workers.

Further, the subcommittee actions are not intended to limit the access of the Department to the account and use the monies for the rehabilitation of injured workers to meet its federal matching requirement.


Representative Dave Wanzenried

DW/eb

cc: Julia Robinson
Director, SRS

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 26, 1991, at 3:10 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 807

Presentation and Opening Statement by Sponsor:

Representative Royal Johnson told the Committee House Bill 807 was an attempt to make workers' compensation and unemployment insurance exemptions consistent. He explained an area specifically addressed was newspaper carriers.

Proponents' Testimony:

Mike Voeller a lobbyist for Lee Enterprises Inc. told the Committee their primary concern was with the section regarding unemployment insurance exemption for newspaper carriers and free lance correspondents. He explained it is the same exemption as the workers' compensation statutes. He commented House Bill 807 received a unanimous vote in the House Labor Committee, was placed on the consent calendar and passed 99 to zero.

EXECUTIVE ACTION ON HOUSE BILL 807Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 807 to correct the reference of Title 39 by deleting Chapter 71 and inserting Chapter 51. MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote:

Senator Blaylock moved House Bill 807 BE CONCURRED IN as amended. MOTION CARRIED UNANIMOUSLY. Senator Lynch will carry House Bill 807 on the Senate floor.

HEARING ON HOUSE BILL 837Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll told the Committee House Bill 837 is a major rewrite of the workers' compensation system. He explained it would re-define definitions of 'temporary/total' and 'permanent/partial'. Workers job pool is re-defined. House Bill 837 determines by a formula the amount of award based on age, education, and work experience if permanently or partially disabled. It changes the present 500 weeks wage loss system to 350 weeks of an "impairment award"; and puts in 8 weeks of rehabilitation. If retraining is necessary there is up to 104 weeks of retraining available. The worker has more input into the retraining. He told the Committee HB 837 is revenue neutral and would not cause any rate increase to the employer; it is more fair to the worker. He asked any amendments offered be considered very carefully as not to upset the "delicate balance" of the bill.

Proponents' Testimony:

Norm Grosfield, an attorney in Helena spoke in support of House Bill 837. He told the Committee HB 837 is a joint effort of a number of interest groups concerned about two primary problems in the present delivery system; the area of permanent/permanent partial benefits and the payment of rehabilitation benefits. He explained under the current law there is no rehabilitation benefit even though it is listed in the law. Any effort of bona fide rehabilitation can be negated. Most of the sectors of the workers' compensation system are in agreement that that is a problem. He told the Committee representatives of the State Fund, the self-insurers, labor through Jerry Driscoll, the Chamber of Commerce, and the rehabilitation industry worked on the bill. After the bill was introduced there were questions by the Department of Social and Rehabilitation Services and the Trial Lawyers Association. After meeting with these groups the concerns were worked out. He

commented workers' compensation is a technical and complex area. He offered two technical amendments. Mr. Grosfield explained a repealer was struck, which should not have been struck, when the bill was being put together, and an internal reference to a subsection (on Page 26) which would create problems. Mr. Grosfield presented a written statement to the Committee (Exhibit #1).

George Wood, Executive Secretary of the Montana Self-Insurers Association spoke in support of House Bill 837. He told the Committee his organization was consulted by Representative Driscoll.

James Tutwiler of the Montana Chamber of Commerce asked to be on record in support of House Bill 837. He explained the Chamber worked in the drafting of the bill. He commented it would allow for a better system for individuals injured on the job.

Michael Sherwood representing Montana Trial Lawyers Association spoke in favor of House Bill 837. He told the Committee a representative of the association was involved in the latest drafting of the bill. He commented HB 837 passed the House 100 to zero. He explained passage of House Bill 837 would render House Bill 506 needless.

Jacqueline Terrell representing the American Insurance Association told the Committee the association generally supports House Bill 837. She explained they understand compromises were made and recognizes many positive changes. She commented there are technical problems and would ask for further study by the interim committee on workers' compensation. She told the Committee some of the member companies, especially those in Montana, do not take a position of support.

Gene Phillips on behalf of the Alliance of American Insurers spoke in favor of House Bill 837.

Pat Sweeney representing the State Fund told the Committee the State Fund was involved in the drafting of the legislation at the request of the sponsor. He explained a number of compromises were made on both sides. He commented the State Fund feels House Bill 837 is a good bill and discussion with their actuary have indicated preliminarily it as a revenue neutral bill.

John Whiston, an attorney from Missoula told the Committee he was the representative of the trial lawyers who participated in the negotiations which led to the drafting of House Bill 837. He commented he went back over approximately half a dozen of his clients which have settled in the last year. He explained some would come out a little better under HB 837; some a little worse. He commented those coming out better were more deserving. He stated it provides a real opportunity for real rehabilitation, real assistance in getting people re-trained in the manner they feel is most appropriate.

Ted Doney representing the Rehabilitation Association of Montana, an organization of private rehabilitation providers involved in the workers' compensation system explained the association was involved in the discussion and participated in the drafting of House Bill 837. He commented the association supports the objective of the bill which make needed improvements to the workers' compensation system. He told the Committee there are concerns about how the legislation will be implemented, and the information which is provided the injured worker on his entitlements under the bill. He stated the Department of Labor will work with them in the adoption of rules which will address their concerns. He presented written testimony from Bill Crivello, President of the Rehabilitation Association of Montana (Exhibit #2).

Opponents' Testimony:

Pat Stephenson of Intermountain Claims in Billings spoke in opposition of House Bill 837 (Exhibit #3).

Gary W. Bandbury spoke in opposition to House Bill 837 from a prepared witness statement (Exhibit #4).

Questions From Committee Members:

Senator Aklestad asked Mr. Stephenson if he would point out areas of the bill in which the litigation he spoke of could take place. Mr. Stephenson told the Committee on Page 22, Line 17 in which it states "Upon approval, the agreement constitutes a compromise and release settlement and may not be re-opened by the department". He explained HB 837 has deleted "or by any court". He stated any compromise settlement made under the bill is nothing more than a lump-sum advance because (at a given date in the future) the claimant can assert a claim for further benefits. Deleting "or by any court" the claimant does not have to go through the court to show there has been a material or mutual mistake. He pointed to Page 32, Line 1. The rehabilitation section "has drastically changed from the existing code". He explained the time frames (that an insurer has) are outlined. He commented once an injured worker reaches maximum medical improvement and cannot return his former job position, the insured is to appoint a rehabilitation provider who does a vocational assessment, and determines if the individual can return to work in a normal labor market. If the injured worker disagrees with that determination, under HB 837, he can make demand for rehabilitation benefits. He told the Committee there is nothing in HB 837 which can precludes the 104 weeks of benefits from being litigated; nor is there anything which precludes the 104 weeks of benefits from being compromised. He commented injured parties will seek legal counsel to receive a portion.

Senator Blaylock asked Mr. Grosfield to comment on Mr. Stephenson's statement. Mr. Grosfield explained "or by any

court" has been taken out because of a case which went to the Supreme Court which declared it is unconstitutional to preclude courts from reviewing and considering re-opening of settlements. He told the Committee a bill drafted by the Legislative Council in an effort to address that. Senator Towe pointed out the bill Mr. Grosfield was referring to was House Bill 506 which the Senate Labor Committee has not yet acted on. Mr. Grosfield explained currently there is no type of bona fide rehabilitation program. He commented there was a desire to provide the flexibility to allow private rehabilitation vendors to adopt a reasonable rehabilitation program which could be agreed upon by the injured worker. He commented every effort is made by all parties in workers' compensation to attempt to resolve cases. He stated most insurance companies and insurance representatives would want that flexibility. In order to provide a bona fide and fair program the flexibility is necessary to either resolve the rehabilitation benefit issue or to set up a bona fide program through a rehabilitation vendor.

Senator Blaylock asked George Wood lump-sum. Mr. Wood told the Committee there are no eligibility requirements for rehabilitation. The workers' compensation court has ruled an individual may be eligible but not entitled. He explained this one sets up some eligibility requirements. The individual is not eligible until the steps are gone through and there is an agreement. He told the Committee lump-sums by themselves are not bad.

Senator Towe stated currently an individual who presents eligibility requirements has to present a certificate from a physician, certificate from a rehabilitation provider, etc. He asked Mr. Wood if now there will be injected into that system litigation over whether there is or is not a right to rehabilitation. Mr. Wood told the Committee once eligibility standards are set there is a possibility of litigation. Most of the eligibility standards are very straight forward.

Senator Towe asked Representative Driscoll if what makes the bill revenue neutral is permanent partial is being reduced from 500 weeks to 350 weeks. Representative Driscoll explained currently, on a wage loss system, of up to 500 calendar weeks and by the Ingraham decision these can be lump-summed.

Senator Towe asked if the monies gained for rehabilitation is through cutting it from 500 to 350. Representative Driscoll explained 104 weeks would be added for rehabilitation.

Senator Towe asked Representative Driscoll what is this legislation doing for meaningful rehabilitation which was not in before. Representative Driscoll explained present laws says in rehabilitation the rehabilitation counselor shall try to return the individual to work at the former employer, former job, or former employer, modified position, or anything in the state of Montana which the individual's education and job skills allow

them to perform. He stated "they always come out with parking lot attendant, 7-11 clerk, etc.; anyone with an eighth grade education and isn't in a wheel chair can do those jobs". He commented in the last year or two the division has sent 13 people to SRS for rehabilitation. "There is no rehabilitation in the '87 law". The worker has some say in what he is being re-trained to do.

Senator Towe asked if there were a negotiation between the claimant and the insurer as to what type of rehabilitation plan will be adopted. Representative Driscoll explained if the rehabilitation expert says they can find the individual a job, they have ten weeks to do so. If at the end of those ten weeks if there is no job the individual can do, and the rehabilitation expert has given leads to those jobs, the individual can an opportunity to go for the remainder of the 104 weeks in rehabilitation, i.e., trade school.

Senator Keating asked Mr. Doney if he could explain what vocational rehabilitation is. Mr. Doney referred the question to Kent Kleinkoff, part-owner of a private rehabilitation firms. Mr. Kleinkoff explained vocational rehabilitation is a system of assessing and evaluating a person's professional abilities, training, education, skills, work history, and whatever else may be included in his ability to find work of any kind. He stated in order to work in the industry a vocational rehabilitation counselor must be certified by national certification board, must have advanced training and must pass a national exam.

Senator Keating asked Mr. Kleinkoff if they attempted to find "just any job, a similar job, or a better job". Mr. Kleinkoff told the Committee the original goal of the workers' compensation act which was to return an injured person to work as soon as possible after the injury with a minimum of retraining. He explained the purpose of the '87 act was to attempt to return individual to their original job. If this was not possible, and a modified or alternative job could not be found, the counselor was to find something the person could do, after assessing the workers skills, work history, abilities, etc. He commented the manner in which the '87 law was interpreted and put into place, those in the rehabilitation have not "been real happy with". He stated "we haven't been allowed to do what we feel our training and education and credential prepare us for, which is to help people get back to work".

Senator Keating asked Mr. Kleinkoff if House Bill 837 improves on the '87 act. Mr. Kleinkoff told the Committee he thinks there is an opportunity in the bill to allow the flexibility in the original evaluation (Page 31, Line 11). He explained one of the eligibility requirements is the completion of a rehabilitation plan. In practice the rehabilitation plan will be closely followed by the insurer or the adjuster; and the injured worker will have input into it. Section D, Line 18, requires concurrence by the injured worker. He expressed his

hope in the event HB 837 passes the insurance industry will utilize rehabilitation in a professional manner.

Senator Keating asked Representative Driscoll about Page 31, Line 18, regarding the rehabilitation plan between the injured worker and the insurer. If the plan calls for expenditure of funds the department shall authorize SRS to use funds. He asked if those were medicaid funds. Representative Driscoll explained the department has 1% charge on claims paid which goes into a rehabilitation fund in the workers' compensation system.

Senator Keating asked if workers' compensation takes a portion of their premiums, gives it to SRS to expend for rehabilitation. Representative Driscoll explained under Plans 1, 2, and 3 it is 1% of the actual claims paid in the previous year.

Senator Aklestad stated if the weeks are being reduced, there would be savings there, and more monies would be spent in rehabilitation. He asked Representative Driscoll to give an example in rehabilitation which would be different; and takes more funds but would be "doing the right things". Representative Driscoll gave the example of an individual, making \$12 an hour on construction or logging, who had a serious leg or back injury. The doctor tells this worker to stay on level ground, and do no more climbing. If that person had this type of job they probably had high school math or better. Under the current law there is no way the rehabilitation counselor could not say this individual could not perform work in a grocery store. Under House Bill 837 maybe this individual could get six months or a year of training in rewinding electric motors, or something like that. If this person asked the rehabilitation counselor for one year to finish the plan. If the individual has the vocational skills or education to perform anything in the workers' job pool in Montana they (the counselor) have to say that is what the individual is going to do.

Senator Towe asked Representative Driscoll who designates the rehabilitation provider. Representative Driscoll told the Committee the insurance company designates. Senator Towe asked if there were a provision for the claimant who does not agree with the plan of the provider. Representative Driscoll explained they must come to an agreement.

Senator Towe asked Mr. Grosfield if there were opportunity for the claimant to disagree to the plan of the provider. Mr. Grosfield explained it was stated on Page 31, Line 18. Mr. Grosfield told the Committee (as part of this record) it should be understood the worker must agree to it. If there is a dispute and there cannot be agreement, it is left flexible; the insurer can appoint another one, or the claimant could retain their own rehabilitation counselor. Under current law there are disputes regarding rehabilitation benefits and those go before the workers' compensation court.

Senator Towe asked about the ten week period while waiting to begin the rehabilitation plan; and the eight week period. Mr. Grosfield explained the eight week period is a period, if the injured worker wishes the rehabilitation counselor to attempt to find him employment, can be used for. This eight week period is separate and apart from the 104 weeks. He explained the ten week period is the waiting time between the time is entered into and the time the plan starts.

Closing by Sponsor:

Representative Driscoll told the Committee the 1987 law "did two really bad things; it installed a wage-loss system after being cautioned not to do so. He explained there were 5,300 open claim files at the department prior to the 1987 law. There is now 10,600 because the files cannot be closed. The Supreme Court Ingraham decision stated these can be lump-summed. House Bill 837 eliminates the wage-loss system and goes back to an indemnity award system; and adds rehabilitation benefits. He told the Committee a person with a slight impairment, and does not need rehabilitation, will get less; but the person with an injury that will not allow them to return to their former employment should be able to receive rehabilitation if they choose. He requested Senator Blaylock carry House Bill 837.

HEARING ON HOUSE BILL 730

Presentation and Opening Statement by Sponsor:

Representative Dave Brown told the Committee House Bill 730 was intended to retain rail station facilities in communities of 2,000 or more inhabitants and at least one in each county where railroad operates. It does not require railroads to re-open agencies which were closed before January 1, 1991. He explained this legislation is vital in keeping the laws of agency for railroads in Montana. Prior to 1969 railroads were required to maintain agency facilities in towns of 100 or more inhabitants and at least one in each county. In 1969 the law was amended to 1000 or more inhabitants. The Montana Public Service Commission declined to close anymore agencies and were sued by the Burlington Northern Railroad in 1985. The 9th Circuit Court of Appeals upheld Montana's station law. At the time there were 66 BN agencies in Montana, two Union Pacific, two BA&P stations, one Sioux Line and one Central of Montana. In 1987, BN came to the legislature for relief. The Legislature amended the station law striking the population criteria and one in each county. He explained "ambiguous definitions of public convenience and necessity" were substituted. House Bill 730 addresses in a clearer manner the definition of public convenience and necessity. At the present time there are four Montana Rail Link stations, 25 BN stations, two UP stations, one Montana Western,

negotiation in the House.

Recommendation and Vote:

Motion for House Bill 152 BE CONCURRED IN as amended CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe). Senator Lynch will carry House Bill 152 on the Senate floor.

EXECUTIVE ACTION ON SENATE BILL 417

Amendments, Discussion, and Votes:

Senator Lynch moved to TABLE Senate Bill 417.

Senator Aklestad asked for the motion to TABLE to fail. He told the Committee Senator Williams made a valid point by offering Senate Bill 417. He commented he did not agree with amounts. He believes the amounts in the bill to be unreasonable and has discussed this with Senator Williams. He suggests a percentage figure be used. He stated those receiving the same coverage as those paying higher premiums would at least be paying the administrative costs. The other employers are "picking up the tab". He suggested \$1 per \$100. It would raise \$1.5 million and would increase the percentage of those paying 58 cents on a \$100. He told the Committee at the present time it cost \$8 for administrative costs.

Senator Aklestad told the Committee Senator Williams should be extended the privilege of discussing Senate Bill 417 on the Senate floor. He stated it is an important issue.

Recommendation and Vote:

The motion to TABLE CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

EXECUTIVE ACTION ON HOUSE BILL 837

Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 837 with amendments suggested by Norm Grosfield. Motion CARRIED UNANIMOUSLY.

Senator Lynch moved House Bill 837 BE CONCURRED IN as amended.

Recommendation and Vote:

The motion for House Bill 837 to BE CONCURRED IN as amended CARRIED with six (6) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); three (3) NO (Senator Devlin, Senator Keating, and Senator Nathe voting NO. Senator Blaylock will carry House Bill 837 on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 506

Amendments, Discussion, and Votes:

Senator Blaylock move to TABLE House Bill 506.

Senator Devlin asked for a point of order on a motion to table. He stated there should be no discussion. If a Senator wishes to discuss a tabled bill he can ask the Senator making the motion to withdraw for debate.

Senator Towe ruled (after asking for the will of the Committee) there would be no discussion on a motion to table.

Recommendation and Vote:

The motion to TABLE CARRIED with eight (8) YES (Senator Blaylock, Senator Devlin, Senator Doherty, Senator Keating, Senator Lynch, Senator Pipinich, Senator Nathe, and Senator Towe); one (1) NO (Senator Aklestad).

EXECUTIVE ACTION ON HOUSE BILL 68

Amendments, Discussion, and Votes:

Senator Keating moved House Bill 68 BE NOT CONCURRED IN.

Senator Lynch made a substitute motion House Bill 68 BE CONCURRED IN.

Senator Lynch stated if a business continues the point of a strike is futile because there is no loss on both sides. He stated he hopes there are no strikes, but the whole idea is when there is a strike both sides suffer in order to get to the bargaining table to reach a resolution. If the business continues there is no opportunity to force negotiation.

Recommendation and Vote:

The motion for House Bill 68 BE CONCURRED IN CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe). Senator Blaylock will carry House Bill 68 to the floor of the Senate.

ROLL CALL

ENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/26/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 837 (third reading copy -- blue), respectfully report that House Bill No. 837 be amended and as so amended be concurred in:

1. Title, line 11.

Following: "~~39-71-1019,~~"

Insert: "39-71-1019,"

2. Page 26, line 3.

Following: "jurisdiction"

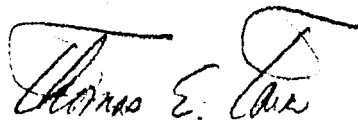
Strike: "under subsection (1)"

3. Page 38, line 4.

Following: "~~39-71-1019,~~"

Insert: "39-71-1019,"

Signed: _____



Thomas E. Towe, Vice-Chairman

LB 4/1/91

Amd. Coord.

Sec. of Senate

FROM: Norm Grosfield, Attorney at Law
Post Office Box 512, Helena, MT 59624

DATE: March 10, 1991

House Bill 837 was drafted to correct various problems that currently exist in the benefit payment system under the Montana Workers' Compensation Act. It is an effort by several interest groups concerned about delivery of benefits under the Act and difficulties with the administration of various provisions of the Act primarily involving the payment of permanent partial disability benefits and rehabilitation assistance for injured workers.

The primary changes in the proposed bill include a modification of the current provisions regarding the payment of permanent partial disability benefits. Currently, such benefits are paid on the basis of a medical impairment rating, and wage supplement payments. The impairment award can fairly easily be established based on the rating granted usually by the treating physician. However, the difficulty in administering the Act in regard to permanent partial disability involves wage supplement benefits. The benefits were intended to pay a differential between what a worker was making at the time of an injury, and what the worker could reasonably expect to make after an injury. However, the difficulty with the current system involves unreasonable and unrealistic expectations as to injured workers' reemployment opportunities. It is often suggested that individuals should seek employment for which they have no experience, no qualifications, and which may be far removed geographically from the worker's long established residence. Further, it is difficult to determine what post-injury income estimate should be used in determining the differential, whether an averaging of wage levels for potential positions should be calculated, or whether the low or high incomes in potential positions should be used. In addition, it is burdensome to continue to monitor fluctuations in actual wage payments, and to keep cases open for years while wage supplement payments are being made. The practical result of the wage supplement approach is that there are many unknowns; and oftentimes it is unfair to the worker in light of the practicalities of the work place, and the unrealistic expectations as to an individual's ability to return to employment.

Under current law, there are very few instances when any true rehabilitation program is suggested or initiated, due to the very restrictive nature of current rehabilitation entitlement provisions in the law. The bill would propose a bona fide rehabilitation benefit allowing a claimant to receive up to 104 weeks of monetary assistance at the temporary total disability rate if the worker is unable to physically return to the worker's prior employment.

To offset the cost for a bona fide benefit while a worker is being retrained, permanent partial payments have been reduced to a maximum potential of 350 weeks and are further reduced utilizing a formula that attempts to place objectivity into the determination of permanent partial awards.

Various minor changes are also being proposed that are required to either delete references to portions of the law that are being repealed or to modify or clarify various provisions in relation to the administration of the Workers' Compensation Act.

HOUSE BILL 837
Senate Labor Committee

Testimony of William J. Crivello
President, Rehabilitation Assn. of Montana
March 26, 1991

Mr. Chairman, Members of the Committee, I wish to offer a few brief comments with regard to House Bill 837. These comments are offered on behalf of the Rehabilitation Association of Montana and the Montana Chapter of Rehabilitation Professionals in the Private Sector. I am presently President of this professional association, and I am also employed as Branch Manager for Crawford Health & Rehabilitation Services of Montana. Crawford Rehabilitation Services provides rehabilitation services on behalf of the State Compensation Mutual Insurance Fund, as well as for self-insured employers and private insurers throughout the state.

We previously testified before the House Labor Committee with regard to this Bill. We recognize that it is an effort to ameliorate some of the problems which have resulted from the 1987 Workers' Compensation legislation. However, while there have been difficulties with regard to the 1987 legislation, our analysis of post-1987 cases reaching closure by rehabilitation specialists shows that forty-two percent of all cases resulted in medical release and return to employment at the job of injury, modified or alternative work, or new employment with new employers. Additionally, forty percent were medically released for alternative jobs, but had not yet returned to work at the time of closure. This does not necessarily reflect negatively on the overall impact of rehabilitation components in the 1987 legislation.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/26/91
BILL NO. HB837

It has been evident, however, that lack of clarity or compliance in the Law resulted in insurers becoming over-reliant upon the mere identification of job alternatives, with little or no provision of service to the injured worker. As rehabilitation professionals, it has never been our preference to postulate minimum wage job options without affording injured workers some type of real rehabilitation assistance, in the form of job placement services, or development of a viable and practical rehabilitation plan to help them get employed again. Like others throughout the industry, we recognize the need to design a cost-effective, responsible rehabilitation component into the system. Further, we recognize that in many instances, unskilled or entry-level employment alternatives may be viable and appropriate for a number of injured workers. Nonetheless, we believe the intent of the Workers' Compensation law is to provide actual services to the injured worker--services which are designed to get them back into regular employment.

We look to the changes proposed in the new legislation with some degree of optimism, particularly as they relate to the potential for the injured worker to be eligible to receive viable rehabilitation services. However, we believe that the Bill, as proposed, may also be prone to abuse, and may result in inappropriate diversions from what would otherwise appear to be reasonable and appropriate rehabilitation entitlements.

We believe that this and other proposed legislation may enhance the early return of injured workers to employment with their employers of injury or to new employers. We also believe that early intervention and return to work assistance most certainly proves beneficial not only to the employer and the insurer, but also to the injured worker. Our primary concerns at this time lie with regard to how the insurers will project rehabilitation service eligibility to injured workers, and the professional demeanor with which they contract for services with rehabilitation professionals.

The proposed legislation appears to address some of our concerns, as well as those of others who have experienced frustration with regard to some of the rehabilitation parameters of the 1987 legislation. We recognize an obvious effort to eliminate some of the ambiguities and uncertainties inherent to the present system, and we applaud the intention to eliminate the practice of over-reliance on identification of jobs, with no regard for the need to provide actual return-to-work assistance for those injured workers desiring or requiring it.

We do not necessarily believe that the elimination of required assessments and prioritized return-to-work options will ultimately improve the system, though it was evident that prior ambiguities in these sections of the Law did create significant problems.

We are committed to professional, responsible, and cost-effective rehabilitation services within the Workers' Compensation system. We will continue to assist in promoting the concept of cost-effective rehabilitation services for injured workers, with the specific purpose of assisting them in returning to gainful employment in an expedient manner. In that regard, we offer these comments for your consideration. We are, of course, always available to address any questions you may have with regard to our stated concerns.

Respectfully submitted

William J. Crivello, M.S., C.R.C.
President

tap

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 26th day of March, 1991.

Name: AT STEPHENSON

Address: 848 Main Suite 7

Billings, MT 59105

Telephone Number: 248-9303

Representing whom?

Intermountain Claims

Appearing on which proposal?

HB 837

Do you: Support? _____ Amend? _____ Oppose? X

Comments:

SEE ATTACHED STATEMENT

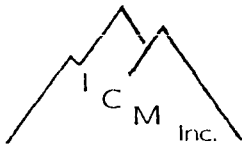
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/26/91

BILL NO. HB837

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



INTERMOUNTAIN CLAIMS

of Montana, Inc.

848 MAIN, SUITE 7
406 2-18-9303

P.O. BOX 50626
BILLINGS, MT 59105

March 25, 1991

RE: House Bill 837

INTRODUCTION:

Four years ago, in 1987, Montana's 50th Legislature passed a comprehensive Workers' Compensation reform bill entitled Senate Bill 315. As with any comprehensive reform bill, concerning the Workers' Compensation statutes, there has been a considerable amount of litigation which has served to further clarify the statutes, as written, in Senate Bill 315.

At this time our Legislature is being asked to consider a new comprehensive reform bill entitled House Bill 837. HB 837 will substantially increase attorney involvement and litigation in Montana Workers' Compensation claims; HB 837 can provide significantly less money in a settlement for a severely injured worker, and can provide for substantially more in a settlement for a less injured worker; HB 837 permits a claimant to compromise his vocational rehabilitation benefits, even without entering a vocational rehabilitation plan; and the terminology, or lack of terminology in clarification of several sections of HB 837 simply invite additional litigation.

INCREASED ATTORNEY INVOLVEMENT:

39-71-741, MCA, deals specifically with compromise settlements, lump sum payments, and lump sum advance payments. This section of the Workers' Compensation Code confirms that upon approval (of a settlement agreement), "The agreement constitutes a compromise and release settlement and may not be reopened by the Division or by any Court." HB 837 has specifically deleted "or by any Court" from the section referred to under 39-71-741, and has also removed "or by any Court" from the subrogation settlement agreement which was provided on Page 11, Number 7, of HB 837.

As stated on the existing Petition for Compromise and Release Settlement, "The claimant understands that by signing this Compromise and Release Settlement Petition, both the named insurer and the claimant agree to assume the risk that the condition of the claimant, as indicated by reasonable investigation to date, may be other than it appears, or may change in the future. The claimant understands that this Petition represents a Compromise and Release Settlement and, if approved, may not be reopened by the Division or by any Court."

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/26/91

BILL NO. HB 837

RE: House Bill 837

March 25, 1991

Page Two

On Page 11, Page 22, and Page 23, HB 837 specifically removes the terminology, "or by any Court" from the settlement agreement. By removing "or by any Court" HB 837 will not allow for any binding settlements under the Workers' Compensation Act. HB 837 will permit the claimant, or the claimant's attorney to repetition the Court, or to simply assert a claim for further damages, at any time after a compromise settlement has been reached.

In the rehabilitation section, HB 837 provides ^{claimant's} for one hundred four weeks of "rehabilitation benefits" at the ~~the~~ maximum total rate. At this time, the maximum total disability rate is \$299.00 per week, thus one hundred four (104) weeks of "rehabilitation benefits" amounts to \$31,096.00.

Nowhere in HB 837 are there any guidelines provided requiring an injured worker to complete a vocational rehabilitation plan, once initiated. Also, HB 837 does not preclude a claimant from compromising his "rehabilitation benefits" into a lump sum settlement.

As HB 837 provides for an entitlement for rehabilitation benefits, but does not provide a requirement that a claimant actually undergo one hundred four (104) weeks of rehabilitation, or training, this section regarding "rehabilitation benefits" simply adds an additional \$31,096.00 to any possible settlement an attorney may wish to negotiate.

If an injured worker does not wish to undergo rehabilitation, but through his counsel has compromised a percentage of the one hundred four (104) weeks of rehabilitation benefits, and agreed to a compromise settlement, under HB 837, the same injured party can, at a later date, reassert a claim for the balance of the rehab benefits. The preceding statement is made with the understanding that HB 837, as stated above, has attempted to remove "or by any Court" from the agreement which constitutes a compromise settlement under the Workers' Compensation Act. Those factors discussed above very clearly confirm HB 837 encourages increased attorney involvement and litigation.

REHABILITATION BENEFITS:

When an injured Montana worker is unable to return to his former position because of a job-related disability, for several years Montana Workers' Compensation law has required a vocational rehabilitation consultant be appointed to complete an employability assessment which would include vocational testing. In many instances, this is the only opportunity an injured worker has to utilize the expertise of a certified vocational counselor, to assist the injured worker in seeking realistic job opportunities.

HB 837 has removed the incentive for an injured worker to cooperate with a vocational rehab counselor in attempting to return to the work force, as the incentive for not returning to work is the opportunity for the claimant to simply make demand for the one hundred four (104) weeks of total disability benefits, which at the maximum rate, of \$299.00 a week, amounts to \$31,096.00. Therefore, if an

RE: House Bill 837
March 25, 1991
Page Three

injured employee can in fact return to work in a modified position, or return to work in his own labor market, it would be in the worker's best interest to not fully cooperate with the vocational rehabilitation provider, and simply claim entitlement to the one hundred four (104) weeks of rehabilitation benefits, in order to increase the amount of any possible settlement by up to \$31,000.00.

Although this writer does not assume to know what is best for injured workers in the State of Montana, if we are to have a "rehabilitation section" in the Workers' Compensation Act, we should also provide the incentive for an injured worker to utilize the vocational rehabilitation services, rather than simply providing a potential entitlement of up to \$31,000.00 to compromise rehabilitation benefits.

Senate Bill 315 clearly established return to work priorities for an injured worker, which allowed for on-the-job training programs or retraining programs, if the claimant was unable to return to work in his normal labor market. HB 837 provides a radical change to the current case law in effect, and will most certainly result in substantial further litigation regarding an injured worker's entitlement to the one hundred four (104) weeks of total benefits. HB 837 specifically does not preclude rehabilitation benefits from being compromised, or settled, which simply allows an injured worker to make claim for up to \$31,000.00, in addition to his partial disability entitlement, without ever completing a vocational rehabilitation plan.

PERMANENT PARTIAL DISABILITY:

In reviewing HB 837's criteria for permanent partial disability benefits, it is quite clear that entitlements for less severely injured employees will be more, under HB 837, while permanent partial disability entitlements for more severely injured employees will be less. We find this portion of the Bill to be contrary to any reasonable interpretation of Workers' Compensation Law.

Although HB 837 has provided a reduction in total PPD benefits, from five hundred (500) weeks to three hundred fifty (350) weeks, this reduction is quite misleading when one computes possible entitlements for injured workers.

We have attached three examples of possible entitlements under the existing statutes, as compared with HB 837. As confirmed by the enclosed examples, an injured worker who has sustained a minimal wage loss, but has been restricted to medium labor, as outlined on the enclosed examples, actually would be entitled to a larger lump sum award under HB 837, as compared with the existing statutes. However, a more severely injured worker, with a more restricted labor market, and a much greater wage loss would be entitled to far less under HB 837, as compared with the existing statutes.

RE: House Bill 837
March 25, 1991
Page Four

The enclosed examples drastically show the inequities as provided in the permanent partial disability entitlement as outlined by HB 837, and if one does not include the potential claim for "rehabilitation benefits", this Bill is grossly inequitable.

It should be noted that the PPD entitlements examples included, and referred to above, are based on a "wage loss" determined by utilizing the average actual earnings of an injured worker at the time of the injury, as compared to documented earning capability, determined by a vocational consultant, after the injured worker has reached maximum medical improvement. HB 837 does not provide a definition for wage loss, and in doing so allows a potential for subjective future wage loss claims, which will simply encourage additional litigation.

SUMMARY:

As confirmed above, the PPD entitlement under HB 837 is grossly inequitable in comparing entitlements between severely injured workers, and less injured workers, as compared with the PPD entitlement provided for in our current statutes.

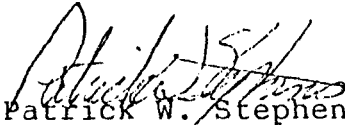
The rehabilitation section of HB 837 simply encourages litigation, on almost every claim in which a claimant cannot return to his former job position, regarding the possible entitlement to a cash award for the rehabilitation benefits. The rehabilitation section itself provides no improvement, of any kind, over the existing statutes involving rehabilitation, and return to work priorities.

HB 837, in 39-71-741, MCA which pertains to compromise settlements and lump sum payments, deletes "or by any Court" from the previous requirement which read, "Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the Division or by any Court." This deletion, in and of itself is enough to reject HB 837, as this deletion will essentially negate any compromise settlement under the Workers' Compensation Act, allowing a claimant to reassert an additional claim for further benefits, any time after a settlement has been reached.

In summary, HB 837 provides no improvement over the current Workers' Compensation and Occupational Disease statutes, however HB 837 substantially encourages attorney involvement and litigation in Montana Workers' Compensation claims. HB 837 should be rejected by the Senate, as this Bill provides no improvement, of any kind, over the existing Workers' Compensation and Occupational Disease statutes.

Respectfully submitted,

INTERMOUNTAIN CLAIMS OF MONTANA


Patrick W. Stephenson
President

PPD ENTITLEMENT - EXAMPLE # 2

2) 32 year old warehouse worker; High School education; \$6.00/hr. wage loss; previously capable of heavy labor; now restricted to light duty labor; 10% impairment; max. PPD rate, \$12.00/hr. earned on job prior to injury.

Existing code; PPD Entitlement (Lump Sum)

1) .10% impairment		
50 wks. X \$149.50 = \$7,475.00		
PV Discount @ 8%	=	\$ 7,206.21
2) \$6.00/hr. wage loss X 40 hrs. = \$240.00		
\$240.00 X 2 ÷ 3 = \$160.00/wk: limited to		
max. PPD rate of \$149.50 per week		
450 wks. X \$149.50 = \$67,275.00		
PV @ 8%	=	48,644.19
		\$ 55,850.40

If case is settled for 500 weeks, lump sum, and Impairment Awarded is not prepaid, PPD Entitlement will be:

500 wks. @ \$149.50: PV @ 8% discount	=	\$ 52,254.16
---------------------------------------	---	--------------

HB 837

1) .10% impairment - no discount	=	\$ 5,232.50
2) Age + 2%	=	1,046.50
3) Education + 2%	=	1,046.50
4) Wage loss + 20% X 350 = 70 wks. X \$149.50	=	10,465.00
5) Labor factor + 20% X 350 = 70 wks. X \$149.50	=	10,465.00
Total PPD Entitlment *		\$ 28,255.50

* Does not include potential claim for "Rehabilitation Benefits" of \$31,096.00 under HB 837

PPD ENTITLEMENT - EXAMPLE #1

1) 32 year old warehouse worker, High School education; \$1.50/hr. wage loss; previously capable of heavy labor; now restricted to medium labor; 10% impairment; max. rate for PPD; \$12.00/hr. earned on job prior to injury.

Existing code; PPD Entitlement (Lump Sum)

1)	.10% impairment		
	.10 X 500 wks. = 50 weeks X \$149.50 = \$7,475.00		
	PV Discount @ 8%	=	\$ 7,206.21
2)	\$1.50 X hr. wage loss X 40 hrs. = \$60.00		
	X 2 ÷ 3 = \$40.00/wk.		
	\$40.00 X 450 wks. = \$18,000.00; PV Discount		
	8%		13,015.17
	Total Lump Sum PPD		<u>\$ 20,221.38</u>

HB 837

1)	.10% impairment - no discount		
	.10 X 350 = 35 wks. X \$149.50	=	\$ 5,232.50
2)	Age + 2%	; .02 X 350 = 7 wks. X	
		\$149.50	=
			1,046.50
3)	Education + 2%	; .02 X 350 = 7 wks. X	
		\$149.50	=
			1,046.50
4)	Wage loss + 10%	; .10 X 350 = 35 wks. X	
		\$149.50	=
			5,232.50
5)	Labor factor + 15%;	.15 X 350 = 52 wks. X	
		\$149.50	=
			7,848.75
	Total PPD Entitlement *		<u>\$ 20,406.75</u>

* Does not include potential claim for "Rehabilitation Benefits" of \$31,096.00 under HB837

PPD ENTITLEMENT - EXAMPLE #3

3) 32 year old warehouse worker; High School education; no wage loss, previously capable of heavy labor, now restricted to medium labor; .10% impairment; max. PPD rate; employee restricted from returning to previous job position, but can return to work with the same employer in a modified position, with no wage change.

Existing code; PPD Entitlement (Lump Sum)

1) 10% impairment \$7,475.00 (50 wks. X \$149.50)		
PV Discount @ 8%	=	\$ 7,206.21
2) No wage loss		-0-
Total		<u>\$ 7,206.21</u>

HB 837

1) 10% impairment	=	\$ 5,232.50
2) Age + 2%	=	1,046.50
3) Education + 2%	=	1,046.50
4) Wage loss	=	-0-
5) Labor + 15% .15 X 350 = 52	=	<u>7,848.75</u>
Total		\$ 15,174.25

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 26 day of March, 1991.

Name: Gary W Banbury

Address: 858 Cobb Hill
Bozeman MT 59715

Telephone Number: 406 - 587-7381

Representing whom?

Cyprus Industrial Minerals

Appearing on which proposal?

HB 837

Do you: Support? Amend? Oppose? X

Comments:

On behalf of Cyprus Minerals a Self Insured Mining Co
employing over 200 people in Madison and Gallatin Counties

Our position on this bill is that through the diligent
efforts of all parties involved this bill has been negotiated
into double talk and legal rhetoric.

I'm sure the parties meant good and represented
faithfully their constituents "but" I believe this to
be labor negotiation where after a painful process the
you get a contract that neither party can live with.
It causes the labor group to lose support and the
plant to close down

I ask you to consider this bill a No solution
no satisfy and No win document.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 33374

DATE 3/26/91

110000

OTC

Please consider rejecting this bill in favor of current
legislation that although not working perfect, will
work better than this, ~~this~~.

DATE

3/26/91

COMMITTEE ON

Senate Labor

HB 730 - 807 - 837

HJR 38

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Harry Bauling	Cypress Mineral	837		X
John Bauling	Cypress Mineral	837		X
Pat Stephenson	Intermountain Churns	837		X
James T. Mullar	TRANSP. COMM. UNION (TCU) MONT JI RAIL LABOR LEGIS COUNCIL	730	X	
Pat Zein	Braxington Northern	730		X
J.W. Greene	Mont Western AR	730		X
Bonnie Williams	Holham Inc. - Trident MT	730		
Lew Berry	BWIR	730		X
Michael J. Sherwood	MTLA	837	X	
Chace Shroff	MNA	807	X	
John Whiston	self	837	X	
BGB ANDERSON	DLI	038	X	
Alan Mills	DLI	HR 38	X	
Norm Grosfield	Self	837	X	
JAMES Tutwiler	mt chamber	837	✓	
Bob Stephens	Int Grain Growers Assn	730		X
Pam Langley	Montana Agri Business Montana Grain Growers Assn	730		X
Deborah J. Jansette	Vocational Resources Inc.	837	X	
Elly M. Pratt	DLI - Self	837		
Kay Foster	Billings Chamber	807	X	
Kay Foster	Billings Chamber	837	✓	
Pat Sweeney	STATE FUND	837	✓	
Chuck Hunter	DOLI	807	✓	
Wendy Vacker	Lee Enterprises	807	✓	
Seagwood	Int Self Insurance Assn	837	✓	
ENE PHILLIPS	ALLIANCE AMER. INS	837	✓	

3	26	91
---	----	----

Senate Labor

HB 730 - 807 - 837 - HJR 38 (Cont'd)

[illegible]

Kent Kleinkopf

Rehabilitation Industries

BILL #

Check One

Support

Oppose

Solomon Fitzpatrick

Loganus G. 1817

730

X

Ted J. Drey

~~At~~ Resolution Account of At

83

Big Farmer

My Recd

57

- Door Judge

MT STATE AFL-CIO

HB 730
WNR 38

DAVE BROWN

HD #72 - sponsor

HB-730

Bob Heiser

UFCU

HP 38

Don All

Mr. Ward Products Assoc.

APR 30
MAY 38

Jacqueline N Terrell

Am. Ins. Assn.

HB 837

HOUSE BILL NO. 837
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 39-71-116, 39-71-123, 39-71-414, 39-71-701, 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003, 39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032, 39-72-601, ---AND---39-72-602, MCA; REPEALING SECTIONS 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, AND 39-71-1033, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary,

as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other

determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job--pool pursuant--to--one-of-the-options-set-forth-in-39-71-1012-but suffers-impairment--or--partial--wage--loss--or--both some capacity but the physical restriction impairs the worker's ability to work.

(15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
 2 worker reaches maximum healing, in which a worker ~~is-unable~~
 3 ~~to-return-to-work-in-the-worker's-job-pool-after--exhausting~~
 4 ~~all--options--set--forth--in--39-71-1012~~ has no reasonable
 5 prospect of physically performing regular employment.
 6 Regular employment means work on a recurring basis performed
 7 for remuneration in a trade, business, profession, or other
 8 occupation in this state. Lack of immediate job openings is
 9 not a factor to be considered in determining if a worker is
 10 permanently totally disabled.

11 (16) The term "physician" includes "surgeon" and in
 12 either case means one authorized by law to practice his
 13 profession in this state.

14 (17) The "plant of the employer" includes the place of
 15 business of a third person while the employer has access to
 16 or control over such place of business for the purpose of
 17 carrying on his usual trade, business, or occupation.

18 (18) "Public corporation" means the state or any county,
 19 municipal corporation, school district, city, city under
 20 commission form of government or special charter, town, or
 21 village.

22 (19) "Reasonably safe place to work" means that the
 23 place of employment has been made as free from danger to the
 24 life or safety of the employee as the nature of the
 25 employment will reasonably permit.

1 (20) "Reasonably safe tools and appliances" are such
 2 tools and appliances as are adapted to and are reasonably
 3 safe for use for the particular purpose for which they are
 4 furnished.

5 (21) "Temporary total disability" means a condition
 6 resulting from an injury as defined in this chapter that
 7 results in total loss of wages and exists until the injured
 8 worker reaches maximum healing.

9 (22) "Year", unless otherwise specified, means calendar
 10 year."

11 ~~Section-2---Section-39-71-1237-MCA7-is-amended-to-read:~~
 12 ~~"39-71-1237---Wages--defined--(1)---"Wages"--means-the-gross~~
 13 ~~remuneration-paid-in-money7-or-in-a--substitute--for--money7~~
 14 ~~for--services-rendered-by-an-employee7-Wages-include-but-are~~
 15 ~~not-limited-to:~~

16 ~~(a)---commissions7---bonuses7---and---remuneration---at---the~~
 17 ~~regular---hourly-rate-for-overtime-work7-holidays7-vacations7~~
 18 ~~and-sickness-periods7~~

19 ~~(b)---board7-lodging7-rent7-or-housing-if-it--constitutes~~
 20 ~~a-part--of--the-employee's-remuneration-and-is-based-on-its~~
 21 ~~actual-value7-and~~

22 ~~(c)---payments-made-to-an-employee-on--any--basis--other~~
 23 ~~than-time-worked7-including-but-not-limited-to-piecework7-an~~
 24 ~~incentive-plan7-or-profit-sharing-arrangement7~~

25 ~~(2)---Wages-do-not-include:~~

(a)--employee---travel---expense---reimbursements---or
allowances-for-meals,-lodging,-travel,-and-subsistence;

(b)--special-rewards-for---individual---invention---or
discovery;

(c)--tips--and-other-gratuities-received-by-the-employee
in-excess-of--those--documented--to--the--employer--for--tax
purposes;

(d)--contributions--made-by--the--employer--to--a-group
insurance-or-pension-plan;-or

(e)--vacation-or-sick-leave-benefits--accrued-but--not
paid;

(3)--For--compensation-benefit-purposes,-the-average
actual---earnings--for--the--four--pay--periods--immediately
preceding-the-injury-are-the-employee's-wages,-except-if-

(a)--the-term-of-employment-for--the--same--employer--is
less--than--four--pay--periods,-in-which-case-the-employee's
wages-are-the-hourly-rate-times-the-number--of--hours--in--a
week-for-which-the-employee-was-hired-to-work;-or

(b)--for--good--cause-shown-by-the-claimant,-the-use-of
the--four--pay--periods--does--not--accurately--reflect--the
claimant's-employment-history-with-the--employer,-in--which
case-the-insurer-may-use-additional-pay-periods-

(4)--(a) For--the--purpose--of--calculating-compensation
benefits-for-an-employee-working-concurrent-employments,-the
average-actual-wages--must--be-calculated--as--provided--in

subsection-(3)-

(b)--The--compensation--benefits-for-a-covered-volunteer
must-be-based-on-the-average-actual--wages--in--his--regular
employment,-except--self-employment-as-a-sole-proprietor-or
partner-who-elected-not-to-be--covered,-from-which-he-is
disabled-by-the-injury-incurred-

(c)--The--compensation--benefits-for-an-employee-working
at-two-or-more-concurrent-remunerated--employments--must--be
based--on--the--aggregate--of--average--actual--wages-of-all
employments,-except-self-employment-as-a-sole-proprietor--or
partner--who--elected--not--to--be--covered,-from-which-the
employee-is-disabled-by-the-injury-incurred-

(5)--If-an-injured-worker-is-engaged-in--self-employment
subsequent--to--an-injury,-earnings-from-self-employment-are
considered-wages-as-defined-in-subsection-(1)--for--purposes
of--determining--entitlement--to--temporary-total-disability
benefits.-If-a-self-employed-worker-is-entitled-to-temporary
total-disability-benefits---and---continues---to---receive
self-employment--income,-temporary-total-disability-benefits
must-be-reduced-by-an-amount--equal--to--two-thirds--of--the
self-employment-income-"

Section 2. Section 39-71-414, MCA, is amended to read:

"39-71-414. Subrogation. (1) If an action is prosecuted
as provided for in 39-71-412 or 39-71-413 and except as
otherwise provided in this section, the insurer is entitled

1 to subrogation for all compensation and benefits paid or to
2 be paid under the Workers' Compensation Act. The insurer's
3 right of subrogation is a first lien on the claim, judgment,
4 or recovery.

5 (2) (a) If the injured employee intends to institute
6 the third party action, he shall give the insurer reasonable
7 notice of his intention to institute the action.

8 (b) The injured employee may request that the insurer
9 pay a proportionate share of the reasonable cost of the
10 action, including attorneys' fees.

11 (c) The insurer may elect not to participate in the
12 cost of the action. If this election is made, the insurer
13 waives 50% of its subrogation rights granted by this
14 section.

15 (d) If the injured employee or the employee's personal
16 representative institutes the action, the employee is
17 entitled to at least one-third of the amount recovered by
18 judgment or settlement less a proportionate share of
19 reasonable costs, including attorneys' fees, if the amount
20 of recovery is insufficient to provide the employee with
21 that amount after payment of subrogation.

22 (3) If an injured employee refuses or fails to
23 institute the third party action within 1 year from the date
24 of injury, the insurer may institute the action in the name
25 of the employee and for the employee's benefit or that of

1 the employee's personal representative. If the insurer
2 institutes the action, it shall pay to the employee any
3 amount received by judgment or settlement which is in excess
4 of the amounts paid or to be paid under the Workers'
5 Compensation Act after the insurer's reasonable costs,
6 including attorneys' fees for prosecuting the action, have
7 been deducted from the recovery.

8 (4) An insurer may enter into compromise agreements in
9 settlement of subrogation rights.

10 (5) If the amount of compensation and other benefits
11 payable under the Workers' Compensation Act have not been
12 fully determined at the time the employee, the employee's
13 heirs or personal representatives, or the insurer have
14 settled in any manner the action as provided for in this
15 section, the department shall determine what proportion of
16 the settlement shall be allocated under subrogation. The
17 department's determination may be appealed to the workers'
18 compensation judge.

19 (6) (a) The insurer is entitled to full subrogation
20 rights under this section, even though the claimant is able
21 to demonstrate damages in excess of the workers'
22 compensation benefits and the third-party recovery combined.
23 The insurer may subrogate against the entire settlement or
24 award of a third party claim brought by the claimant or his
25 personal representative, without regard to the nature of the

1 damages.

2 (b) If no survival action exists and the parties reach
3 a settlement of a wrongful death claim without apportionment
4 of damages by a court or jury, the insurer may subrogate
5 against the entire settlement amount, without regard to the
6 parties' apportionment of the damages, unless the insurer is
7 a party to the settlement agreement.

8 (7) Regardless of whether the amount of compensation
9 and other benefits payable have been fully determined, the
10 insurer and the claimant may stipulate the proportion of the
11 third-party settlement to be allocated under subrogation.
12 Upon review and approval by the department, the agreement
13 constitutes a compromise settlement of the issue of
14 subrogation and may not be reopened by the department or by
15 any court."

16 Section 4. Section 39-71-701, MCA, is amended to read:

17 "39-71-701. Compensation-----for-----temporary-----total
18 disability--(1)--Subject to the limitation in 39-71-736, a
19 worker is eligible for temporary total disability benefits
20 when the worker suffers a total loss of wages as a result of
21 an injury and until the worker reaches maximum healing.

22 (2)--The determination of temporary total disability
23 must be supported by a preponderance of medical evidence.

24 (3)--Weekly compensation benefits for injury producing
25 temporary total disability shall be 66-2/3% of the wages

1 received at the time of the injury. The maximum weekly
2 compensation benefits may not exceed the state's average
3 weekly wage at the time of injury. Temporary total
4 disability benefits must be paid for the duration of the
5 worker's temporary disability. However, if a worker is
6 released by the treating physician to the same, a modified,
7 or an alternate position that is available to the worker
8 with the same employer with a wage equivalent to or higher
9 than the wage at the time of injury, the worker is no longer
10 eligible for temporary total disability benefits even though
11 the worker has not reached maximum healing. A worker is
12 again entitled to temporary total benefits if for any reason
13 the job is no longer available to the worker and he
14 continues to be temporarily totally disabled. The weekly
15 benefit amount may not be adjusted for cost of living as
16 provided in 39-71-702(5).

17 (4)--In cases where it is determined that periodic
18 disability benefits granted by the Social Security Act are
19 payable because of the injury, the weekly benefits payable
20 under this section are reduced, but not below zero, by an
21 amount equal, as nearly as practical, to one-half the
22 federal periodic benefits for such week, which amount is to
23 be calculated from the date of the disability social
24 security entitlement.

25 (5)--Notwithstanding subsection (3), beginning July 1,

~~1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."~~

Section 3. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is ~~unable to return to work due to injury~~ PERMANENTLY TOTALLY DISABLED, AS DEFINED IN 39-71-116, the worker is eligible for permanent total disability benefits. ~~At an insurer's request, an evaluation of all options under 39-71-1012 must be made before permanent total disability status is determined.~~ Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 and ~~39-71-1026~~.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an

amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."

Section 4. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability ~~---impairment awards and wage supplements. (1) The benefits available for permanent partial disability are impairment awards and wage supplements. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined physical restriction as a result of a work-related injury~~

1 may--be-eligible-for-an-impairment-award-and-wage-supplement
2 benefits-as-follows:

3 (a)--The-following-procedure-must-be-followed-for-an
4 impairment-award:

5 (i)--Each--percentage-point-of-impairment-is-compensated
6 in-an-amount-equal-to-5-weeks-times--66-2/3%--of--the--wages
7 received--at--the--time--of--the--injury,--subject-to-a-maximum
8 compensation-rate-of-one-half-of-the-state's-average--weekly
9 wage-at-the-time-of-injury:

10 (ii)--When---a---worker---reaches---maximum---healing,---an
11 impairment-rating-is-rendered-by-one-or-more--physicians--as
12 provided--for--in-39-71-711,--impairment-benefits-are-payable
13 beginning-the-date-of-maximum-healing:

14 (iii)--An-impairment-award-may-be-paid-biweekly-or--in--a
15 lump-sum,--at--the-discretion-of-the-worker,--lump-sums-paid
16 for-impairments-are-not--subject--to--the--requirements--set
17 forth--in--39-71-741,--except--that-lump-sum-conversions-for
18 benefits-not-accrued-may-be-reduced-to-present-value-at--the
19 rate-set-forth-by-the-department-in-39-71-741(5):

20 (iv)--If--a--worker--becomes-eligible-for-permanent-total
21 disability-benefits,--the-insurer-may--recover--any--lump-sum
22 advance--paid--to-a-claimant-for-impairment,--as-set-forth-in
23 39-71-741(5).--Such-right--of--recovery--does--not--apply--to
24 lump-sum--benefits--paid--for-the-period-prior-to-claimant's
25 eligibility-for-permanent-total-disability-benefits:

1 (v)--If--a--worker---suffers---additional---injury,---an
2 impairment--award--payable-for-the-additional-injury-must-be
3 reduced--by--the--amount--of--a--previous--award--paid---for
4 impairment-to-the-same-site-on-the-body:

5 (b)--The-following-procedure-must-be-followed-for-a-wage
6 supplement:

7 (i)--A--worker--must--be--compensated-in-weekly-benefits
8 equal-to-66-2/3%--of--the--difference--between--the--worker's
9 actual--wages--received--at--the--time-of-the-injury-and-the
10 wages-the-worker-is-qualified-to-earn-in--the--worker's--job
11 pool,--subject-to-a-maximum-compensation-rate-of-one-half-the
12 state's-average-weekly-wage-at-the-time-of-injury:

13 (ii)--Eligibility--for-wage-supplement-benefits-begins-at
14 maximum-healing-and-terminates--at--the--expiration--of--500
15 weeks--minus--the--number--of--weeks--for--which--a-worker's
16 impairment--award--is--payable,--subject--to--39-71-710,---A
17 worker's--failure--to--sustain-a-wage-loss-compensable-under
18 subsection--(1)(b)(i)--does--not--extend--the--period--of
19 eligibility.---However,--if--a--worker--becomes--eligible-for
20 temporary-total-disability,--permanent-total--disability,--or
21 total--rehabilitation--benefits--after--reaching--maximum
22 healing,--the-eligibility-period-for-wage-supplement-benefits
23 is-extended-by-any-period-for-which-a-worker-is--compensated
24 by-these-benefits-after-reaching-maximum-healing:

25 (2)--The--determination--of-permanent-partial-disability

1 must-be-supported-by-a-preponderance-of-medical-evidence;

2 (3) --Notwithstanding-subsection-(1)--beginning--July--17,
3 1987--through--June--30--1991--the-maximum-weekly-compensation
4 benefits--for--permanent--partial--disability-may-not-exceed
5 \$149.50--which-is-one-half-the-state's-average--weekly--wage
6 established-July-17-1986--

7 (1) If an injured worker suffers a permanent partial
8 disability and is no longer entitled to temporary total or
9 permanent total disability benefits, the worker is entitled
10 to a permanent partial disability award.

11 (2) The permanent partial disability award must be
12 arrived at by multiplying the percentage arrived at through
13 the calculation provided in subsection (3) by 350 weeks.

14 (3) An award granted an injured worker may not exceed a
15 permanent partial disability rating of 100%. The criteria
16 for the rating of disability must be calculated using the
17 medical impairment rating as determined by the latest
18 edition of the American medical association Guides to the
19 Evaluation of Permanent Impairment. The percentage to be
20 used in subsection (2) must be determined by adding the
21 following applicable percentages TO THE IMPAIRMENT RATING:

22 (a) if the claimant is 30 years of age or younger at
23 the time of injury, 0%; if the claimant is over 30 years of
24 age but under 56 years of age at the time of injury, 3% 2%;
25 and if the claimant is 56 years of age or older at the time

1 of injury, 5% 3%;

2 (b) for a worker who has completed less than 9 years of
3 education, 5% 3%; for a worker who has completed 9 through
4 12 years of education or who has received a graduate
5 equivalency diploma, 3% 2%; for a worker who has completed
6 more than 12 years of education, 0%;

7 (c) if a worker has no wage loss as a result of the
8 industrial injury, 0%; if a worker has an actual wage loss
9 of \$2 or less an hour as a result of the industrial injury,
10 10%; if a worker has an actual wage loss of more than \$2 an
11 hour as a result of the industrial injury, 20%; and

12 (d) if a worker, at the time of the injury, was
13 performing heavy labor activity and after the injury the
14 worker can perform only light or sedentary labor activity,
15 20%; if a worker, at the time of injury, was performing
16 heavy labor activity and after the injury the worker can
17 perform only medium labor activity, 15%; if a worker was
18 performing medium labor activity at the time of the injury
19 and after the injury the worker can perform only light or
20 sedentary labor activity, 10%.

21 (4) The weekly benefit rate for permanent partial
22 disability is 66 2/3% of the wages received at the time of
23 injury, but the rate may not exceed one-half the state's
24 average weekly wage. The weekly benefit amount established
25 for an injured worker may not be changed by a subsequent

adjustment in the state's average weekly wage for future fiscal years.

(5) If a worker suffers a subsequent compensable injury OR INJURIES to the same part of the body, the award payable for the subsequent injury must-be-reduced-by-the-amount MAY NOT DUPLICATE ANY AMOUNTS paid for the previous injury OR INJURIES.

(6) As used in the section:

(a) "Heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "Medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "Light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "Sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 5. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury and subject to the provisions of subsection (1)(d), the insurer shall

furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(d) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and

paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988. After December 31,

1991, the percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116."

Section 6. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements, and lump-sum payments, ~~and lump-sum advance payments.~~ (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department ~~or by any court.~~

~~(d) -- The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.~~

(2) (a) If an insurer has accepted initial liability for an injury, ~~permanent total and permanent partial wage supplement~~ disability benefits may be converted in whole or in part to a lump-sum payment.

~~(b) -- The conversion may be made only upon agreement~~

between-a-claimant-and-an-insurer.

(B) THE TOTAL OF ANY LUMP-SUM CONVERSION IN PART THAT IS AWARDED TO A CLAIMANT PRIOR TO THE CLAIMANT'S FINAL AWARD MAY NOT EXCEED THE ANTICIPATED AWARD UNDER 39-71-703 OR \$20,000, WHICHEVER IS LESS.

~~(c)(b)~~(C) The An agreement is subject to department approval. The department may approve-an-agreement-if:

~~(i)--there-is-a-reasonable-dispute-concerning-the-amount of-the-insurer's-future-liability-or-benefits;-or~~

~~(ii)--the--amount-of-the-insurer's-projected-liability-is reasonably--certain--and--the--settlement--amount---is---not substantially--less--than-the-present-value-of-the-insurer's liability~~ disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

~~(d)--The--parties'-failure--to-reach-agreement-is-not-a dispute-over-which-a-mediator-or-the--workers'-compensation court-has-jurisdiction.~~

~~(e)(c)~~(D) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department or-by-any-court.

~~(3)--(a)-Permanent-partial-wage-supplement-benefits--may be-converted-in-part-to-a-lump-sum-advance.~~

~~(b)--The--conversion--may--be--made--only-upon-agreement~~

between-a-claimant-and-an-insurer.

~~(c)--The-agreement-is-subject--to--department--approval. The--department--may--approve--an--agreement--if-the-parties demonstrate-that-the-claimant-has-financial-need-that:~~

~~(i)--relates-to-the-necessities-of-life-or-relates-to-an accumulation-of-debt-incurred-prior-to-injury;-and~~

~~(ii)-arises-subsequent-to-the-date-of-injury--or--arises because-of-reduced-income-as-a-result-of-the-injury.~~

~~(d)--The-parties'-failure-to-reach-an-agreement-is-not-a dispute--over--which-a-mediator-or-the-workers'-compensation court-has-jurisdiction.~~

~~(d)--A-lump-sum-payment-of-permanent-partial--disability benefits--approved-by-the-department-or-granted-by-the-court must-be-paid.~~

~~(4)(3)~~ Permanent total disability benefits may be converted in whole or in part to a lump-sum-advance lump sum. The total of all lump-sum advance payments CONVERSIONS IN PART THAT ARE AWARDED to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum advance payment rests in the discretion of the department. The approval or award of a lump-sum advance payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture ~~as set forth in~~ 39-71-1026, and that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under this section SUBSECTION (3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum advance payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) The Subject to the other provisions of this section, the department has full power, authority, and jurisdiction under--subsection--(1) to allow, approve, or condition compromise settlements for any type of benefits provided for under this chapter or lump-sum advances payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) Subject--to--39-71-2401,--a A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum-advance-under-subsection--(4) lump sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum advance payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

SECTION 7. SECTION 39-71-1003, MCA, IS AMENDED TO READ:

"39-71-1003. Eligibility for vocational rehabilitation expenses. (1) Upon certification by the department of social and rehabilitation services, a disabled worker may be paid

vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of social and rehabilitation services."

Section 8. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

~~{3}--"I.W.R.P."--means--an--individualized,--written rehabilitation--program-prepared-by-the-department-of-social-and-rehabilitation-services;~~

~~{4}{3}~~ "Rehabilitation benefits" means benefits provided in 39-71-1003, [section 11], and 39-71-1023 through 39-71-1025.

(4) "Rehabilitation plan" means an individualized plan ~~of-education,--training,--or--specialized--job--modification designed--to-assist-a-disabled-worker-in-acquiring-skills-or aptitudes-to-return-to-work~~ TO ASSIST A DISABLED WORKER IN ACQUIRING SKILLS OR APTITUDES TO RETURN TO WORK THROUGH JOB PLACEMENT, ON-THE-JOB TRAINING, EDUCATION, TRAINING, OR SPECIALIZED JOB MODIFICATION.

(5) "Rehabilitation provider" means a rehabilitation counselor, ~~---other---than---the--department--of--social--and rehabilitation--services,~~ certified by the board for rehabilitation certification and designated by the insurer to the department OR A DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COUNSELOR WHEN A WORKER HAS BEEN CERTIFIED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES UNDER 39-71-1003.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

~~{7}--{a}--"Worker's--job--pool"--means--those--jobs--typically available-for-which-a-worker-is-qualified,--consistent--with the--worker's--age,--education,--vocational--experience--and aptitude--and--compatible---with---the--worker's--physical capacities-and-limitations-as-the--result--of--the--worker's injury,--back-of-immediate-job-openings-is-not-a-factor-to-be considered;~~

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job pool is the job service office area that includes the worker's residence, and

(ii) the statewide job pool is the state of Montana."

Section 9. Section 39-71-1013, MCA, is amended to read:

"39-71-1013. Agreement between worker and insurer regarding option. A worker and an insurer may agree that an option in 39-71-1012 is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under 39-71-2401 to a rehabilitation plan and file the agreement with the department."

NEW SECTION. Section 10. Rehabilitation benefits. "(1) If, as a result of an injury, an injured worker cannot return to the job the worker held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsections (2) through (5). If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury, and if it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided for in subsections (2) through (5).

(2) If it is determined that the worker cannot return

to the job held at the time of injury, a vocational assessment must be completed by a rehabilitation provider designated by the insurer. The assessment must identify potential vocational goals, vocational rehabilitation training, and reemployment and wage potential and take into consideration the worker's age, education, training, work history, and residual physical capacities.

(3) If it is determined that a worker cannot return to the job the worker held at the time of injury, the rehabilitation provider shall assist the worker in obtaining new employment and the worker must be given up to 8 weeks of weekly benefits at the worker's temporary total disability rate while attempting to obtain new employment. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection must be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) Up to 104 weeks of weekly rehabilitation benefits must be provided at the temporary total disability rate established for the worker. The number of weeks of benefits provided must be stated in a rehabilitation plan filed with the department. The benefits must be paid only while the worker is engaged in an approved rehabilitation or apprenticeship program or during a reasonable period of time

1 while--the--worker--is--waiting---to---begin---an---approved
 2 rehabilitation-or-apprenticeship-program--The-benefits-begin
 3 when--the--rehabilitation--provider--files-the-plan-with-the
 4 department. (1) AN INJURED WORKER IS ELIGIBLE FOR
 5 REHABILITATION BENEFITS IF:

6 (A) THE INJURY RESULTS IN PERMANENT PARTIAL DISABILITY
 7 OR PERMANENT TOTAL DISABILITY AS DEFINED IN 39-71-116;

8 (B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS
 9 PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE
 10 TIME OF THE INJURY;

11 (C) A REHABILITATION PLAN COMPLETED BY A REHABILITATION
 12 PROVIDER AND DESIGNATED BY THE INSURER CERTIFIES THAT THE
 13 INJURED WORKER HAS REASONABLE VOCATIONAL GOALS AND A
 14 REEMPLOYMENT AND WAGE POTENTIAL WITH REHABILITATION. THE
 15 PLAN MUST TAKE INTO CONSIDERATION THE WORKER'S AGE,
 16 EDUCATION, TRAINING, WORK HISTORY, RESIDUAL PHYSICAL
 17 CAPACITIES, AND VOCATIONAL INTERESTS; AND

18 (D) A REHABILITATION PLAN BETWEEN THE INJURED WORKER
 19 AND THE INSURER IS FILED WITH THE DEPARTMENT. IF THE PLAN
 20 CALLS FOR THE EXPENDITURE OF FUNDS UNDER 39-71-1004, THE
 21 DEPARTMENT SHALL AUTHORIZE THE DEPARTMENT OF SOCIAL AND
 22 REHABILITATION SERVICES TO USE THE FUNDS.

23 (2) AFTER FILING THE REHABILITATION PLAN WITH THE
 24 DEPARTMENT, THE INJURED WORKER IS ENTITLED TO RECEIVE
 25 REHABILITATION BENEFITS AT THE INJURED WORKER'S TEMPORARY

1 TOTAL DISABILITY RATE. THE BENEFITS MUST BE PAID FOR THE
 2 PERIOD SPECIFIED IN THE REHABILITATION PLAN, NOT TO EXCEED
 3 104 WEEKS. REHABILITATION BENEFITS MUST BE PAID DURING A
 4 REASONABLE PERIOD, NOT TO EXCEED 10 WEEKS, WHILE THE WORKER
 5 IS WAITING TO BEGIN THE AGREED-UPON REHABILITATION PLAN.
 6 REHABILITATION BENEFITS MUST BE PAID WHILE THE WORKER IS
 7 SATISFACTORILY COMPLETING THE AGREED-UPON REHABILITATION
 8 PLAN.

9 (3) IF THE REHABILITATION PLAN PROVIDES FOR JOB
 10 PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST
 11 THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS
 12 ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8
 13 WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF,
 14 AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER
 15 DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN
 16 WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE
 17 CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION
 18 BENEFITS PROVIDED IN THIS SECTION.

19 (4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED
 20 WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF
 21 INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION
 22 PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN
 23 RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS
 24 DETERMINED THAT HE CANNOT, THE WORKER IS ENTITLED TO
 25 REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN

1 SUBSECTION (2).

2 (5) A worker may not receive temporary total or
3 biweekly permanent partial disability benefits and
4 rehabilitation benefits during the same period of time. The
5 ~~insurer may agree to extend rehabilitation benefits beyond~~
6 ~~the 104-week period.~~

7 ~~(5)(6)~~ The rehabilitation provider, AS AUTHORIZED BY
8 THE INSURER, shall continue to work with and assist the
9 injured worker until the rehabilitation plan is completed.

10 **Section 11.** Section 39-71-1025, MCA, is amended to
11 read:

12 "39-71-1025. Auxiliary rehabilitation benefits. In
13 addition to benefits otherwise provided in this chapter,
14 separate benefits not exceeding a total of \$4,000 may be
15 paid by the insurer for:

16 ~~(1)~~ reasonable travel and relocation expenses used to:
17 ~~(a)~~ (1) search for new employment;
18 ~~(b)~~ (2) return to work but in a new location; and
19 ~~(c)~~ (3) implement a rehabilitation program pursuant to a
20 final order of determination by plan that has been filed
21 with the department; and

22 (4) attend an on-the-job training program.

23 ~~(2) reasonable participation with an employer in an~~
24 ~~on-the-job training program."~~

25 **Section 12.** Section 39-71-1032, MCA, is amended to

1 read:

2 "39-71-1032. Termination of benefits for noncooperation
3 with rehabilitation provider ~~or the department of social and~~
4 ~~rehabilitation services --~~ department hearing and appeal.

5 (1) If an insurer believes a worker is refusing unreasonably
6 to cooperate with the rehabilitation provider ~~or the~~
7 ~~department of social and rehabilitation services,~~ the
8 insurer, with 14 days' notice to the worker and department
9 on a form approved by the department, may terminate any
10 rehabilitation benefits the worker is receiving under this
11 part until the worker cooperates. ~~If the worker is receiving~~
12 ~~wage supplement rehabilitation benefits, those benefits must~~
13 ~~continue until the department's determination under~~
14 ~~subsection (3) is made.~~

15 (2) The worker may contest the insurer's termination of
16 benefits by filing a written exception to the department
17 within ~~10~~ 20 working days after the date of the 14-day
18 notice. The worker or insurer may request a hearing ~~or the~~
19 before the department may hold a hearing on its own motion.
20 The department shall hold a hearing within 30 days of
21 receipt of the request. The department shall issue an order
22 within ~~30~~ 15 days of the hearing.

23 (3) ~~If no exceptions are timely filed or the department~~
24 ~~determines the worker unreasonably refused to cooperate, the~~
25 ~~insurer may terminate wage loss supplement rehabilitation~~

benefits the worker is receiving until the worker cooperates with the rehabilitation provider. If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within ~~10~~ working 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

Section 14, Section 39-72-601, MCA, is amended to read:

"39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department or an insurer shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, one member of the panel to be the chairman."

Section 15, Section 39-72-602, MCA, is amended to read:

"39-72-602. Insurer may accept liability procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability questions of liability and to determine whether the claimant is totally disabled and the extent, if any, of reduction of benefits pursuant to 39-72-706, the following procedure must be followed:

(a) The department or an insurer with notice to the department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department or an insurer with notice to the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease and the extent, if any, of reduction of benefits pursuant to 39-72-706. The panel member shall submit a report of his findings to the department. When a second examination has been requested, the reports of the

examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the department shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

NEW SECTION. Section 13. Codification instruction.
[Section 11 10] is intended to be codified as an integral part of Title 39, chapter 71, part 20, and the provisions of

Title 39, chapter 71, apply to [section 11 10].

NEW SECTION. Section 14. Repealer. Sections 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, and 39-71-1033, MCA, are repealed.

NEW SECTION. SECTION 15. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 1991.

-End-